

EXAMINING THE EDUCATION DEPARTMENT'S IMPLEMENTATION OF BORROWER DEFENSE

HEARING

BEFORE THE

COMMITTEE ON EDUCATION
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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EXAMINING THE EDUCATION DEPARTMENT'S IMPLEMENTATION OF BORROWER DEFENSE

**Thursday, December 12, 2019
House of Representatives
Committee on Education and the Workforce,
Washington, D.C.**

The subcommittee met, pursuant to call, at 9:01, a.m., in Room 2175, Rayburn House Office Building. Hon. Robby C. "Bobby" Scott (Chairman of the committee) presiding.

Present: Representatives Scott, Davis, Grijalva, Courtney, Fudge, Sablan, Wilson, Bonamici, Takano, Adams, DeSaulnier, Norcross, Morelle, Wild, Harder, Schrier, Underwood, Hayes, Shalala, Levin, Omar, Trone, Stevens, Lee, Trahan, Castro, Foxx, Roe, Thompson, Walberg, Guthrie, Byrne, Grothman, Stefanik, Allen, Smucker, Banks, Walker, Comer, Taylor, Watkins, Wright, Meuser, Johnson, Keller, Murphy.

Also Present: General Brown.

Staff Present: Tylease Alli, Chief Clerk; Katie Berger, Professional Staff; Rachel Beers, GAO Detailee, Ilana Brunner, General Counsel – Health and Labor; Sharit Cardenas, Labor Policy Fellow; Emma Eatman, Press Assistant; Christian Haines, General Counsel – Education; Kia Hamadanchy, Oversight Counsel; Ariel Jona, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Andre Lindsay, Staff Assistant; Jaria Martin, Clerk/Assistant to the Staff Director; Max Moore, Staff Assistant; Jacque Mosley, Director of Education Policy; Veronique Pluviose, Staff Director; Benjamin Sinoff, Director of Education Oversight; Banyon Vassar, Deputy Director of Information Technology; Claire Viall, Professional Staff; Joshua Weisz, Communications Director; Cyrus Artz, Minority Parliamentarian; Kelsey Avino, Minority Fellow; Courtney Butcher, Minority Director of Coalitions and Member Services; Dean Johnson, Minority Staff Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesic, Minority Director of Operations; Audra McGeorge, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Carlton Norwood, Minority Press Secretary; Brandon Renz, Minority Staff Director; Alex Ricci, Minority Professional Staff Member; Chance Russell, Minority Legislative Assistant; and Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy.

Chairman SCOTT. The Committee on Education and Labor will come to order. We want to welcome everyone, and note that a quorum is present. The committee is meeting today in an oversight hearing to hear testimony from the Department of Education's implementation of the Borrower Defense Rule. Pursuant to Committee Rule 7(c), opening statements are limited to the Chair and Ranking Member. This allows us to hear from our witnesses sooner, and provides all members with adequate time to ask questions.

I would like to thank Secretary DeVos for being with us today, and thank her for agreeing to hold enough time in her schedule to allow all of the members present to ask 5 minutes of questions pursuant to House rules. And I am especially thankful because as chair, I am exercising my prerogative to go last in the question order. And so, if she were to leave early, I would not get to ask questions. So, thank you for agreeing to stay with us for the full time.

I recognize myself now for the purpose of making an opening statement.

We are here to examine the Department of Education's implementation of the Borrower Defense Rule, and I want to thank—thank you, Madam Secretary, for appearing before the committee to discuss this important issue.

The Borrower Defense Rule is grounded in basic fairness. Student borrowers, who are defrauded by their college, face severe financial and emotional consequences. And it is, therefore, cruel and counterproductive for the Federal Government to compound their misfortune by collecting on their student loans.

Accordingly, the Higher Education Act requires the Secretary of Education to provide debt relief to defrauded borrowers. Until recently, that authority was rarely needed because institutional fraud was uncommon, but, in 2015, Corinthian Colleges, a large for-profit chain, abruptly closed its doors in the face of widespread allegations of fraud. Those allegations were later substantiated with countless reports of schools luring students with false promises of guaranteed jobs upon graduation and inaccurate information about the transferability of credits. A year later, another for-profit chain, ITT Tech, closed under similar circumstances.

In response to a surge of claims, the Obama Administration issued a new Borrowers Defense Rule to streamline the process for providing relief to defrauded students. By the time the Trump Administration took office, 28,000 Corinthian students had already received relief, and the Department was on pace to process the remaining 54,000 pending claims by the spring of 2017.

However, under the present leadership, the Department has refused to implement the Borrower Defense Rule. Instead of providing defrauded borrowers with full and timely relief as the law allows, the Department halted processing claims, so that it could invent a new formula that ensured most defrauded borrowers would get only a fraction of relief that they were eligible to receive.

The Department's initial partial relief formula would have deprived about 93 percent of defrauded students' full relief. In 2018, the Federal Court blocked the initial partial relief formula because it misused students' personal data. But even after the court's ruling, which specifically asserted the Department could provide time-

ly and full relief to eligible borrowers under the Obama era framework, the Department refused to do so. In fact, in 18 months, between the court's June 18th ruling, June 2018 ruling, and today's announcement of a new revised partial relief formula, the Department did not present—process a single Borrower Defense claim.

Meanwhile, the victims of predatory schools are being left in limbo. The number of borrowers awaiting relief has grown from 54,000 to roughly 240,000. So, Madam Secretary, your refusal to process claims is inflicting serious harm on students that you have the duty to serve.

While the Department has been searching for a legal method to shortchange these defrauded borrowers, these defrauded borrowers have been left with mountains of debt, worthless degrees, and none of the job opportunities they were promised. In many cases, they were unable to go back to school, start a family, or move on with their lives. And not only has the Department refused to provide relief to defrauded students, it also illegally collected on 45,000 borrowers, who are awaiting you to take action on their claims. In some cases, these individuals had wage, wages and tax returns, garnished by the very government who was supposed to be providing them relief.

The court found you in court—in contempt of court for collecting on roughly 16,000 of these borrowers, but now the Department has conceded that it was illegally collecting on about 45,000 borrowers.

In sum, the defrauded borrowers have been cheated twice: first, by their college, then by the Department of Education that refused to make them whole. In court filings, the Department admitted to gross negligence in handling the Borrowers Defense Rule.

Throughout the last year, this committee has been—has sent multiple requests for information and documents in an attempt to understand the rationale for changing the Department's policy. The Department has continually refused to comply with those requests. This lack of transparency was in full display yesterday when a media outlet published documents revealing the Department's own staff conducted an extensive review of claims from former Corinthian and ITT Tech students and found that student borrowers who attended these schools deserved full debt relief. Those memos should have been provided to the committee in response to our repeated requests. Their existence raises, unfortunately, two important questions. One, why was there a refusal to provide relief and immediate debt relief to defrauded borrowers, despite the clear finding of the Department staff? And, two, are there other relevant documents in the Department that the Department is withholding from the committee and the public that would shed light on policy decisions?

Today's hearing is intended to get answers to these and other questions on the—about the Department's policy on behalf of roughly 240,000 borrowers awaiting relief. So, thank you, again, for joining us today. And I yield now to the ranking member, Dr. Foxx, for the purpose of making an opening statement.

[The statement by Chairman Scott follows:]

Prepared Statement of Hon. Robert C. “Bobby” Scott, Chairman, Committee on Education and Labor

We are here to examine the Department of Education’s implementation of the Borrower Defense rule. I want to thank you, Madame Secretary, for appearing before the Committee to discuss this important issue.

Borrower Defense is a rule grounded in basic fairness. Student borrowers who are defrauded by their college face severe financial and emotional consequences. It is therefore cruel and counterproductive for the federal government to compound their misfortune by collecting on their student loans.

Accordingly, the Higher Education Act requires the Secretary of Education to provide debt relief to defrauded borrowers. Until recently, that authority was rarely needed because institutional fraud was uncommon. But in 2015, Corinthian Colleges – a large for-profit chain – abruptly closed its doors in the face of widespread allegations of fraud.

Those allegations were later substantiated with countless reports of schools luring students with false promises of guaranteed jobs upon graduation and inaccurate information about the transferability of credits. A year later, a second for-profit chain, I-T-T Tech, closed under similar circumstances.

In response to a surge in claims, the Obama administration issued a new Borrower Defense rule to streamline the process for providing relief to defrauded students.

By the time the Trump administration took office, 28,000 Corinthian Colleges students had already received relief, and the Department was on pace to process the remaining 54,000 claims pending by the Spring of 2017.

However, under the present leadership, the Department refused to implement the Borrower Defense rule. Instead of providing defrauded borrowers full and timely relief – as the law allows – the Department halted processing of claims so it could invent a new formula that ensured most defrauded borrowers would get only a fraction of the relief they were eligible to receive.

The Department’s initial partial relief formula would have deprived 93 percent of defrauded students of full relief.

In 2018, a federal Court blocked the initial partial relief formula because it misused students’ personal data. But even after the Court’s ruling, which specifically asserted the Department could provide timely and full relief to eligible borrowers under the Obama-era framework, the Department refused to do so.

In fact, in the 18 months between the Court’s June 2018 ruling and Tuesday’s announcement of a new revised partial relief formula, the Department did not process a single Borrower Defense claim.

Meanwhile, victims of predatory schools are being left in limbo. The number of borrowers awaiting relief has grown from 54,000 to roughly 240,000.

Madame Secretary, your refusal to process claims is inflicting serious harm on the students you have a duty serve. While the Department has been searching for a legal method of shortchanging defrauded borrowers, those defrauded borrowers have been left with mountains of debt, worthless degrees, and none of the job opportunities they were promised. In many cases, they have been unable to go back to school, start a family, and move on with their lives.

Not only has the Department refused to provide relief to defrauded students, it also illegally collected on 45,000 borrowers who are waiting for you to take action on their claims. In some cases, these individuals had their wages and tax returns garnished by the very government that was supposed to be providing them relief. The Court found you in contempt of court for collecting on roughly 16,000 of these borrowers, but now the Department is conceding that the illegal collection involved 45,000 borrowers.

In sum, defrauded borrowers have been cheated twice: First by their college, and then by a Department of Education that refuses to make them whole. In Court filings, the Department admitted to “gross negligence” in its handling of the Borrower Defense rule. This is perhaps one of the few areas on which we can agree.

Throughout the last year, this Committee has sent multiple requests for information and documents in an attempt to understand the rationale for changing the Department’s policy. The Department has continually refused to comply with those requests.

This lack of transparency was on full display yesterday, when a media outlet published documents revealing that the Department’s own staff conducted an extensive review of claims from former Corinthian and ITT Tech students, and found that student borrowers who attended these schools deserve full debt relief.

Those memos should have been provided to the Committee in response to our repeated requests. Their existence raises, unfortunately, two important questions:

1. Why was there a refusal to provide full and immediately debt relief to defrauded borrowers, despite the clear findings of your own staff?

2. What other relevant documents is the Department withholding from this Committee and the public that would shed light on its policy decisions?

Today's hearing is intended to get answers to these and other questions about the Department's policy on behalf of roughly 240,000 borrowers awaiting relief.

Thank you, again, for joining us today. I now yield to the Ranking Member, Dr. Foxx, for the purpose of making an opening statement.

Mrs. FOXX. Thank you, Mr. Chairman. Thank you, Secretary DeVos, for being here today. It is my hope that today's hearing will provide members of the committee with the chance to understand how the Department of Education is working to address borrowers' defense claims that have been filed with the Department.

Mr. Chairman, I would like to make one thing abundantly clear. Above all else, committee Republicans support smart, focused, and constructive oversight. Members of Congress have an important responsibility to protect every single tax dollar. Everyone in this room knows how seriously we take that responsibility. Strong and effective oversight can strengthen the integrity of our institutions, including the Department of Education. Ensuring the Federal Government is efficient and accountable should be a top priority for all members in Congress.

Sadly, this committee is missing an opportunity to address serious oversight issues. We could investigate the widespread and brazen lawmaking by the United Autoworker Union Leaders, who betrayed hardworking Americans in favor of self-enrichment. We know the UAW's senior union leaders engaged in money laundering, tax fraud, bribery, and embezzlement, but this committee has taken no action.

We could investigate the potential fraud within Head Start. A recent report from the nonpartisan Government Accountability Office, GAO, indicated there was income fabrication and doctored applications to impact an individual's eligibility.

We could investigate how potentially tens of thousands of people may be committing student loan fraud, as a GAO report found borrowers may have understated their income or overstated their family size to reduce their student loan payments.

There are real opportunities to work together to address these serious issues that require honest oversight. Instead, committee Democrats will choose to use their time today attacking Secretary DeVos for delays in responses to oversight requests she is responding to. Let me remind everyone here today that the process to produce the oversight documents requested by any member of Congress, including the committee chairman, requires reviews across multiple offices within the agency. All of this takes time and is necessary to produce documents and answers that are, actually, responsive to members.

Despite the limitations of the bureaucracy, the Education Department is trying to work with the committee Democrats to respond to all their requests. So, contrary to claims, I expect to hear today from my colleagues across the aisle, Secretary DeVos and the Education Department are committed to providing relief to students who have been harmed by fraudulent practices and are re-

forming the Borrower Defense to Repayment Rule, both to clarify standards and make the process more accessible.

Since taking office, Secretary DeVos has spent more than 2 years on deliberations, public hearings, negotiations with higher ed stakeholders, and considering, incorporating, and responding to public comments on this issue. They did so with a regulatory reset in mind to hold colleges and universities accountable, and provide relief to students who have been harmed by deceptive practices.

Claims that Secretary DeVos is unnecessarily or purposefully delaying relief for these borrowers is false—are false. Secretary DeVos is putting reforms in place that will help defrauded students navigate the process of getting the loan relief they deserve, and committee Republicans are supportive of these efforts.

Defrauded students who have been financially harmed should get relief. I thank Secretary DeVos, again, for being here today, and look forward to our discussion about how the Education Department is working to protect student borrowers and American taxpayers by not only holding fraudulent institutions accountable, but also working to prevent fraud from happening in the first place. Thank you, Mr. Chairman.

[The statement by Mrs. Foxx follows:]

Prepared Statement of Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor

Thank you, Secretary DeVos, for being here today. It is my hope that today's hearing will provide Members of the Committee with a chance to understand how the Department of Education is working to address borrowers' defense claims that have been filed with the Department.

Mr. Chairman, I'd like to make one thing clear, above all else, Committee Republicans support smart, focused, and constructive oversight. Members of Congress have an important responsibility to protect every single tax dollar. Everyone in this room knows how serious we take that responsibility.

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I thank Secretary DeVos again for being here today, and I look forward to our discussion about how the Education Department is working to protect student borrowers and American taxpayers by not only holding fraudulent institutions accountable but also working to prevent fraud from happening in the first place.

Chairman SCOTT. Thank you. And, Dr. Foxx, without objection, all other Members who wish to insert written statements into the record may do so by submitting it to the Committee Clerk electronically in Microsoft Word format, by 5:00, by 14 days—within 14 days of today.

I would like to welcome Secretary DeVos, and thank her, again, for appearing before the committee. I will now yield to the gentleman from Michigan, Mr. Walberg, who has requested the honor of introducing the Secretary.

Mr. WALBERG. I thank you, Mr. Chairman, for your deference to allow me this opportunity. We Michiganders are proud people. And I know there will be disagreements here in this hearing today about what the Secretary is doing, but having had the privilege and honor of knowing her and her family, going back into the early 1980s, and knowing the impact that her family, as well as the family she married into, has had in not only Michigan, but all across this country, not because they were pushed into it, but because they had a passion for seeing young people educated from K through college, and to make sure it was done in appropriate ways and that people have had choices that would not have had choices before. They have done it in a way that has made a difference, and it continues on into their children, as well in cultural areas, educational areas, manufacturing, bringing up people that would not have had the opportunity that they had.

So, I understand that this will be a challenging hearing today. I do know, from personal experience, that our Secretary wants to do things right, wants to do it according to law, wants to make sure that things are carried out on both sides of the ledger, and especially that students and taxpayers are treated fairly. And I know that because of knowing how she and her family have carried on the life in Michigan, and touching lives who would not have been carried on in a way before that led to success.

So, I just want my colleagues to know that background information, as well, even though she is a Secretary of Education and is entirely capable of answering all the questions we have. I welcome you, and thank you for being here.

Chairman SCOTT. Thank you very much. Before you begin your testimony, Madam Secretary, I would like to acknowledge the presence of retired Air Force Major General Mark Brown, chief operating officer of the Office of Federal Student Aid, for agreement with the committee. General Brown is here to assist the Secretary

in her answers. He is not a witness at this hearing. In the course of answering a question directed to her, the Secretary, according to the agreement, may consult with General Brown or direct him to assist her in the response. But insofar as he is not a witness, members are reminded that questions, including follow-up questions, may not be directed to him personally, but must be directed to the Secretary.

Let me remind you, Madam Secretary, that we have received your written statement and it will appear in full in the hearing record pursuant to Committee Rule 7(d) and committee practice. You are asked to limit your oral presentation to a 5-minute summary of your written statement pursuant to Title 18 U.S. Code Section 101. Are you aware of that code section, prohibiting false statements to committee?

So, we will forego the spectacle of the swearing in. Therefore, before you begin your testimony, please remember to press the button on the microphone in front of you so that it will turn on and the members can hear you. As you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow to signal that you have 1 minute remaining. When the light turns red, your 5 minutes have expired and we would ask you to wrap up. During member questions, in answering a question, please remember to, once again, turn on your microphone.

I now recognize the Secretary of Education, Secretary DeVos.

**TESTIMONY OF THE HONORABLE BETSY DEVOS, SECRETARY,
U.S. DEPARTMENT OF EDUCATION**

Secretary DEVOS. Thank you so much, Mr. Chairman. Thank you, Congressman Walberg, for that very kind introduction.

Chairman Scott, Ranking Member Foxx, and members of the committee, let me, first, thank the committee for its willingness to make this a productive hearing. We have provided the committee 18,000 pages of documents during the past month on Borrower Defense alone. We have briefed you several times, and I am hopeful we can use today's hearing to continue in that spirit of constructive dialogue.

Let me also thank you for the opportunity to set the record straight on this administration's approach to Borrower Defense to repayment. I want to be very clear. Students are my number one priority. They are why I come to work every day. So, if students have been deceived by institutions and suffered financial harm as a result, they should be made whole. But if claims are false or students did not suffer financial harm, then hardworking taxpayers, including those who scraped and saved to faithfully pay their own student loans, should not have to pay somebody else's student loans, too. It is a matter of fairness.

Adjudication of these claims must treat all students and taxpayers fairly. Simply discharging all of these loans, as some on this committee suggest be done, is not fair to taxpayers, nor to those who have paid or are paying their loans.

This administration's commitment to fairness and the rule of law continues to guide our thinking with regard to Borrower Defense. When Borrower Defense arrived in 1995, it was a regulation in the Higher Education Act that was little known and little used. In fact,

in the 20 years from 1995 to 2015, fewer than 60 claims were filed. Then the previous administration weaponized the regulation against schools it simply did not like. They applied the law in a discriminatory fashion. So, since 2015, there has been a 5,000 percent increase in Borrower Defense claims.

This administration is committed to pulling back the previous administration's overreach, and will enforce a Borrower Defense Rule that is consistent with Congress' intent, that protects all borrowers and that treats taxpayers and schools fairly. Before I discuss the important distinctions of our Borrower Defense Rule, let me begin by saying what it does not do.

First, it does not apply retroactively. When our rule goes into effect on July 1st next year, it will apply only to loans first disbursed after that date. This means that the Department will continue to enforce, in good faith, the previous administration's 2016 rule for all loans disbursed between July 1, 2017, and July 1, 2020.

Second, our rule does not shield any school from accountability, nor does it relax oversight of bad ones. All institutions, no matter their tax status, are held accountable under our rule.

Finally, our rule does not demand that students prove that their school intentionally deceived them. Instead, the rule provides due process for all parties. Our process focuses on individual students and requires evidence from both the borrower and the school before deciding a claim. And unlike the prior administration's rule, the student always has the opportunity to respond to the school's case.

Now, let me discuss the basics of what our rule does do. First, our rule puts into place a process that is clear, understandable, and easily accessible for borrowers. It also ensures that claims are processed efficiently, carefully, transparently, and fairly.

Second, students may file either affirmative or defensive claims, all of which will be judged using a preponderance of the evidence standard.

Third, our rule provides a legally grounded, reasoned, and appropriate definition of misrepresentation. It enables both borrowers and institutions to present evidence, obtain relevant evidence we are considering in the case, and respond to any evidence in the record.

These reforms constitute much needed course corrections to the 2016 rule currently in place. The Obama Administration's rule punishes for-profit schools, but gives nonprofits a pass for the very same conduct.

Now let me turn to the ongoing adjudication of existing claims before the Department. Yes, there is a backlog of Borrower Defense claims at Federal Student Aid. To say that I am frustrated by that is an understatement. But rather than focus on why there is a backlog, too many have, instead, focused on creating more chaos in a circus-like atmosphere. Here are the inconvenient facts about Borrower Defense.

First, we inherited from the Obama Administration more than 64,000 Borrower Defense claims. So, I asked the IG to investigate why they had made such little progress processing these claims. The IG found material weaknesses in the previous administration's procedures for approving and denying claims. In fact, the prior administration was encouraging claims to be filed, knowing full well

it lacked the ability to even accurately track them. It had no process in place for reviewing any claims, and it knew that the Department could not quickly and legally give blanket forgiveness of all loans. So, when they left office, they left tens of thousands of claims behind.

Greeted by this crushing number of applications, and without effective guidance from Congress, we took action to establish a process for reviewing the backlog using the prior administration's categories as our baseline. We quickly adjudicated 32,400 claims. Our relief methodology was based on the same data, Social Security Administration data to be exact, that the Obama Administration used to measure schools under their Gainful Employment Rule.

Unfortunately, in May of 2018, a Federal District Court in California determined that using that data violates the Privacy Act. We strongly disagree, and have been waiting for a decision on appeal from the Ninth Circuit for well more than a year.

The Department stands ready to process these claims. I want to process these claims. We simply need a decision from the court. In the meantime, we are doing everything we can to process claims in another manner. I recently approved a new scientifically robust methodology that relies on publicly available 2017 Gainful Employment earnings data, Social Security Administration earnings, College Scorecard data, and IRS information to determine harm and calculate the amount of relief.

Ultimately, what the Department wants, what I want, and what taxpayers deserve, is to provide fair relief to all those borrowers who actually have been harmed. That is what the law requires. That is what you intended by the Borrower Defense to Repayment Law, and that is what we are doing. Thank you. I will be happy to answer your questions.

[The statement of Secretary DeVos follows:]

**Written Testimony
Secretary Betsy DeVos
U.S. Department of Education**

**Testimony before the House Committee on Education and Labor on
“Examining the Education Department’s Implementation of Borrower Defense.”**

December 12, 2019

Chairman Scott, Ranking Member Foxx, and Members of the Committee:

Let me first thank the committee for its willingness to make this a more productive hearing. We have produced 18,000 pages of documents during the past month, we have briefed you several times, and I’m hopeful we can use today’s hearing to continue in that spirit of productive dialogue.

Let me also thank you for the opportunity to set the record straight on this Administration’s approach to borrower defense to repayment. Let me be very clear: Students are my number one priority. They are why I come to work every day. So, if students have been deceived by institutions and suffered financial harm as a result, they should be made whole. But if claims are false, or students did not suffer financial harm, then hardworking taxpayers should not pay their student loans for them.

It’s a matter of fairness.

Adjudication of these claims must treat students, schools, and taxpayers fairly. Simply discharging all of these loans, as some on this committee suggest, is not fair to taxpayers and to those who have paid their loans or to schools.

Any form of blanket approval for forgiveness is not fair to the taxpayers nor does it represent the spirit and intent of any of the borrower defense to repayment rules.

This commitment to fairness continues to guide our thinking with regard to borrower defense. When this Administration's Borrower Defense Rule goes into effect on July 1, 2020, all borrowers will receive the protections that they deserve and will be assured fair treatment. Our regulations explicitly recognize the unique circumstances and experiences of each and every borrower.

There has been a lot disinformation about the 2019 Rule, so let me begin by saying what our 2019 Rule does not do.

First, the borrower defense provisions of the 2019 Rule will apply only to loans first disbursed after July 1, 2020. It will not apply retroactively to loans disbursed to students prior to that date. This means that the Department will continue to enforce, in good faith, the previous Administration's 2016 Rule for all loans disbursed between July 1, 2017 and July 1, 2020. For loans first disbursed before July 1, 2017, the pre-2016 standards still apply. That means BD claims on pre-2017 loans will be adjudicated based using the applicable state standard, just as it was before the 2016 Rule. The 2019 Rule thus does not affect this Administration's processing of BD claims currently held by the Department – no student has received a loan governed by the 2019 Rule.

The 2019 Rule does not shield any school from accountability, nor does it relax oversight of bad ones. All institutions, no matter their tax status, are held accountable under our 2019 Rule.

Additionally, the 2019 Rule does not demand that students prove that their school intentionally deceived them. Instead, the Rule provides due process for all parties. Our process focuses on individual students and requires evidence from both the borrower and the school before deciding a claim. And, unlike the prior Administration's 2016 Rule, the student always has the last word because he or she is explicitly allowed to reply to the school's response.

Finally, under our Rule, borrowers have three years after they leave an institution, for whatever reason, to file a BD claim. Misrepresentations can, and often do, occur before a student enrolls. So, the actual period in which a student can file a claim would likely be much longer than three years. For example, for a student who earns a bachelor's degree, the effective period would likely be closer to seven years.

Now let me discuss the basics of what our Rule does do.

First, the 2019 Rule puts into place a borrower defense process that is clear, understandable, and easily accessible for borrowers, while also ensuring that claims are processed efficiently, carefully, transparently, and fairly.

Second, students may file either affirmative or defensive claims, all of which will be judged using a preponderance-of-the-evidence standard.

Third, the Rule provides a legally grounded, reasoned, and appropriate definition of "misrepresentation." Before deciding a BD claim, the 2019 Rule requires the Department to allow borrowers and institutions to provide evidence to the Department, obtain relevant evidence in the Department's possession that the Department is using to decide the BD claim, and respond to any evidence in the record. The borrower always receives the last word, as the 2019 Rule

allows the borrower to submit a reply to any response submitted to the Department by the school to the borrower's application for BD relief.

Fourth, the 2019 Rule treats students equally and fairly. The reforms of the 2019 Rule are a much-needed course correction to the current 2016 Rule. Indeed, the 2016 Rule explicitly discusses the example of an individual who wishes to enroll in a selective, regionally accredited liberal arts school. The school gives inflated data to a well-regarded school ranking organization regarding the median grade point average of recent entrants, and also includes that inflated data in its own marketing materials. This inflated data raises the place of the school in the organization's rankings in independent publications.

In this scenario, under the 2016 Rule according to the Obama Administration, even if the student relied on the misrepresentation about the admissions data to his detriment, the borrower cannot obtain relief because the institution that misrepresented itself was "a selective liberal arts" school. The 2016 Rule was thus applied in a discriminatory fashion, excusing "selective liberal arts" schools from responsibility for misrepresentation without ever considering actual student harm. Under the 2019 Rule, and aided by our new College Scorecard, all students at all schools are protected against harm.

Many in Congress and in the higher education community have argued that the answer to these issues is for the Department simply to grant blanket relief for all borrowers, no matter the substance of the BD claim. This, too, is unacceptable. Take the following example: A BD claimant from Corinthian asserts only one allegation -- that he or she attended one of the programs covered by the Department's findings of widespread job placement rate (JPR) misrepresentations. There is no reason to grant blanket relief in this circumstance because the Department can compare the borrower's stated dates of enrollment, campus, and program against

our loan data and Corinthian data to conclude that the borrower's application alleging a job placement rate misrepresentation should be approved or not.

Take another example: A borrower submits an application that makes substantive allegations that would not support an approval under the borrower defense regulation, such as my "my school is terrible" or "my loans are too expensive". Neither example would state a claim under state law, nor would they constitute substantial misrepresentations under the Federal standard in the 2016 Rule.

Similarly, the Department has claims that state "my teacher harassed me" or "I was assaulted by another student". The claims potentially may be actionable against the school but are not related to the borrower's enrollment at the school or the loans taken out to pay for the education and, therefore, do not provide a basis for relief under any of the Borrower Defense Regulations for 1995 or 2016. Yet, many would have the Department simply grant full relief on all these claims.

Let me now turn to the ongoing adjudication of existing claims before the Department.

Yes, there is a backlog of borrower defense claims at Federal Student Aid. To say that I am frustrated by that backlog is an understatement. But rather than focus on why there is a backlog, too many have instead focused on creating a media circus.

Here are the inconvenient facts about borrower defense: First, we inherited from the Obama Administration more than 64,000 borrower defense claims. So, I asked the IG to investigate why the Obama Administration made such little progress processing those claims. The IG found "weaknesses" in the procedures established by the previous Administration for approving and denying claims. In fact, the prior Administration was encouraging claims to be filed knowing full

well it lacked the ability even to accurately track them. They had no effective process for the timely review of large numbers of borrower defense claims. Rather than deal with the claims, they just walked away and left these tens of thousands claims behind for this Administration.

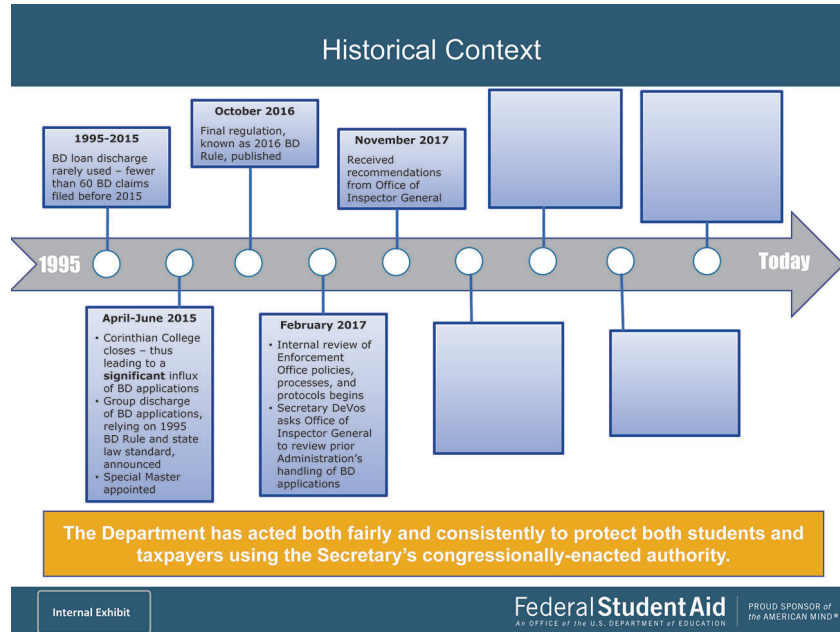
Faced with this crushing number of applications, we took action to establish a process for reviewing the backlog of claims, using the prior Administration's categories as our baseline. We quickly adjudicated 32,400 claims.

Our relief methodology for adjudicating the claims was based on the same source of data—Social Security Administration data to be exact—that the Obama Administration used to measure schools under its “gainful employment” rule.

Unfortunately, in May of 2018, a Federal district court in California determined that the manner in which the Department obtained earnings data from the Social Security Administration, pursuant to a data arrangement, violates the Privacy Act. We strongly disagree and have been waiting for a decision on appeal from the 9th Circuit since filing an appeal over a year ago. The Department stands ready to process these claims and continues to explore methods for doing so as it awaits a decision from the 9th Circuit.

Ultimately, what the Department wants, what I want, and what taxpayers deserve, is to provide fair relief to all those borrowers who truly have been harmed. That is what the law requires, that is what you intended by the borrower defense to repayment provision, and that is what we are doing.

Thank you.



Chairman SCOTT. Thank you, Madam Secretary. Under Committee Rule 8(a), we will now question the witness on the 5-minute rule. As I mentioned earlier, as Chair, I have decided to go to the end. So, I will yield to the next senior Member, the Majority side, who will be followed by the Ranking Member or her designee. We will then alternate between the parties.

And I remind Members, again, that all questions are to be directed to the Secretary, who can consult with General Brown, or—and I would also remind members that the subject of the hearing is Borrower Defense. Per agreement with—and per our agreement, members should limit their questions to that issue. I now yield 5 minutes to the gentlelady from California, Ms. Davis.

Ms. DAVIS. Thank you. Thank you, Mr. Chairman. And, Madam Secretary, welcome. We are glad that you are here. In the course of our discussion with you today, I hope we can determine your interest and your thinking on this issue. One of your roles, of course, is to protect the taxpayer, but we hope you will also want to protect students from the harm caused by predatory for-profit programs.

Today, you are here to get credit, I think, for the new partial relief formula, but it does deny full relief to the vast majority of defrauded students. Can you tell us how many partial relief funding formulas you discussed with your Department before settling on this one?

Secretary DEVOS. Well, thank you, Congresswoman, for that question and for your continued concern about and focus on students. We share that concern and want to do what is right for all students.

We considered a number of different methodologies once the court shut us down in May of 2018. And we wanted to make sure

that we had a scientifically robust and defensible approach to being able to determine whether a student was, indeed, financially harmed, and we believe that this new methodology addresses those concerns, and will indeed treat and consider each student and their individual circumstances very fairly and straightforwardly.

Ms. DAVIS. But I think you must be aware that the new formula does rely on incomplete earnings data which represents only about 20 percent of all programs. Would you agree that is incomplete?

Secretary DEVOS. Well, it relies on a number of different data sets, and it is all publicly available. It is all—it is actually more expansive than just the gainful employment data, and it is taking into consideration—

Ms. DAVIS. But we hope—

Secretary DEVOS.—programs at schools at which the student has filed a claim versus programs, like programs, across the country.

Ms. DAVIS. Well, I certainly hope that you will look at that again because the 80 percent of all borrowers only includes borrowers who completed degrees, and most students seeking relief under Borrower Defense do not complete their degrees. So, I want to read to you a quote from a story, which came from the recent NPR story. Are you familiar with that story at the NPR?

Secretary DEVOS. I have heard about it. I have not listened or looked at it in depth.

Ms. DAVIS. Okay, and I believe that was one that really had to do with the work in your Department, and I quote, “I was also told by the recruiters from the school,” and this is a student speaking about what happened, “I was also told by the recruiters from the school about wages I could make that I have yet to be able to earn due to the fact that the school is and was not very credible. The ITT Tech recruiters assured me AA students graduate making around 50,000 to 60,000 a year, and a B.S. graduate would be around 80,000.”

So, they misrepresented their product, their name brand, and their education. Would you say that student has been harmed?

Secretary DEVOS. I am not going to comment to hypotheticals. I am sympathetic to that student’s plight, and if that student has filed a claim, it will, of course, be adjudicated and processed appropriately through what—our efforts with—at the Department and FSA.

Ms. DAVIS. Well, you know, does the university not have a responsibility to provide what it claims it will? There is literally no other consumer protection that does not restore full repayment of a fraudulent product. We are all aware of that. We have probably been through it.

NPR reported yesterday that internal memos in your own Department show that career staff advocated for defrauded students to receive full relief from Borrowers Defense. Did you review the memos that came from your own Department?

Secretary DEVOS. I am not sure which memos to which you are referring. There are lots of memos generated within the Department of Education. There are hundreds and hundreds of lawyers, and many of them have lots of opinions. So, if you would like to share the specific documents, I would be happy to review them.

Ms. DAVIS. I believe there were thousands of them, and I am just wondering, I mean, according to the report, the majority of career staff disagree with you. And so, that was clear in the report and you will, I am sure, have a chance to have a look at that..

And I think there is also, you know, a concern that if you weren't listening to the career staff that were telling you what they were seeing with students that were definitely harmed, but did you rely on that same staff for the partial defense plan that you came up with?

Secretary DEVOS. Congresswoman, what I know when I came into my job is, there were tens of thousands of claims and there was no process and no structure for actually considering them. We worked on and developed a process and a structure, implemented it, and we are well down the way of considering all of the claims that we had pending and then the court shut us down. We had to develop another process. We are still waiting for the court to opine on the ruling that they made in May of 2018.

Davis. Thank you. Mr. Chairman, my time is up. I was also going to go into the Federal Trade Commission coming up with the University of Phoenix ruling. And the interesting thing about that is that if students had a Federal loan, they will probably not be made whole, but if they got their yield, their loans through the school, they will, which is an interesting dilemma that we are going to have to face. Thank you, Mr. Chairman.

Chairman SCOTT. The gentlelady's time has expired. Dr. Foxx?

Mrs. FOXX. Thank you, again, Mr. Chairman. Secretary DeVos, it is important to conduct good oversight and to do that we need to have a good working relationship with the Department. I know you are trying to cooperate with congressional oversight, so thank you for those efforts.

Madam Secretary, I know there are several letters that you have received from the chairman that his staff has also sent a significant number of emails with additional requests. Is that accurate?

Secretary DEVOS. Yes, it is.

Mrs. FOXX. My understanding is that you are diligently working to address those requests. Is that correct?

Secretary DEVOS. Yes, it is and we have been for sure.

Mrs. FOXX. More generally speaking, how many letters have you received from Congress since taking office and what is your overall response rate?

Secretary DEVOS. Since I took office, on average, we receive 1.8 letters every day from members of Congress to address specific issues. We have responded to 95 percent of those letters and I have placed a high priority on making sure we are responsive and timely in our responses.

Mrs. FOXX. So, 1.8 letters per day,—

Secretary DEVOS. Per day.

Mrs. FOXX.—from members of Congress.

Secretary DEVOS. Yes.

Mrs. FOXX. Then moving on to Borrower Defense, these questions might require more technical information. So, I am fine with General Brown sharing information with you to answer the question. There is a report the Department issued before you were there that

claimed FSA was on target to clear all eligible Borrower Defense claims by spring of 2017. Are you familiar with this report?

Secretary DEVOS. Yes, I am.

Mrs. FOXX. Do you know how many claims the administration had processed at that point and how many remained then?

Secretary DEVOS. I believe there were 16,000. Is it 16,000 that had been processed before I came in and then—

Mrs. FOXX. Sixteen thousand?

Secretary DEVOS. Sixteen thousand and there were 64,000 awaiting me when I came.

Mrs. FOXX. Okay. So, could you tell us why you were not able to clear pending claims by spring of 2017?

Secretary DEVOS. Well, as I mentioned in my opening comments, there was no process in place to actually consider the claims. The ones that had been processed early on were clearly ones that there was a hundred percent relief involved. But as more of those claims were considered, we consider—they continued to deteriorate, to use the Federal Student Aid terminology, in terms of their validity of claim. And so without a process in place, we had no way of actually determining what the relief could or would be.

Mrs. FOXX. It sounds as though from the information that we have been given and things you have either said or alluded to, it was as though the Obama Administration just okayed every single claim, if there was no process. Is that an accurate thing to say? So, it would not have mattered what the students said, but they just said, I want my loan forgiven and it was forgiven?

Secretary DEVOS. Yes. That is based on the data that we have seen and the information that we have been able to find from that time period.

Mrs. FOXX. So, no proof was required of the students that—a student that he or she actually had been defrauded? Secretary DEVOS. No. Once again, there was no real process in place. So, it was a matter of looking at claims and then forgiving them. And that had been done for a number of thousands of students before I arrived.

Mrs. FOXX. All right. And much has been made about the “career staff” who made some recommendations to you early on about how to handle these claims. My assumption is those would have been the same career staff, that that had just been simply sending out forgiveness for loans to these people.

What is your understanding of your role when you get a recommendation from a staff person?

Secretary DEVOS. Well, I get many recommendations from staff, both career and politically appointed staff and take them all into consideration. I clearly understand and acknowledge the expertise—of those who have been in the Department for some time. But in this case, I—for one thing, I am not sure to what documents are even being referred to. So, I do not want to comment on specific documents when I am not sure what they exactly say.

And secondly, like I said, there are hundreds of lawyers in the Department of Education, many of whom generate lots of ideas and lots of recommendations and I take those, I do not review all of them. I get—some come to me, but I take the recommendations, I take the input. And ultimately, I need to make sure I am following

the law and that I am establishing policies and practices that are consistent with the law.

Mrs. FOXX. Thank you, Madam Chairman. Thank you, Mr. Chairman. I apologize for going over.

Chairman SCOTT. That is okay. The gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. There is no question that Corinthian borrowers were defrauded and that fraud was so severe that they were entitled to full relief. In fact, the Department of Education found the Corinthian education provided little or no value. Madam Secretary, do you agree Corinthian defrauded students?

Secretary DEVOS. Congressman, I know that there were a number of students that attended Corinthian programs that have claims with—for financial harm based on their experiences and their individual circumstances. And we are continuing to work to make sure that those claims are ultimately processed and those students are responded to. Again, unfortunately, the courts have stopped our processing of those.

Mr. GRIJALVA. But there has been countless memos developed by your own attorneys and the Department of Education about the wholesale defrauding of students by Corinthian. And, in fact, the court filings by over 20 state attorney generals would disagree that this is a widespread issue. But do you agree that Corinthian misled students on the college's graduation rates? They falsely asserted a degree would result in a guaranteed employment and that academic credits from Corinthian would be accepted and transferable to other colleges? Do you agree that those students were misled?

Secretary DEVOS. I think in some cases that was probably the case, but I also know that the prior administration basically forced schools like Corinthian out of business. They put financial restrictions on Corinthian that allow—that did not allow the school to even continue operating anymore. What we need to do—

Mr. GRIJALVA. But the fundamental question with Corinthian, you can agree or disagree, and I will ask that Corinthian provided no educational value to its students as a result of fraud and that was pervasive before any discussion by any administration regarding that program?

Secretary DEVOS. I do not agree with that narrative. I think there are many students that received valuable education from Corinthian just like they do from many other institutions. The question is what students among them were financially harmed – that is part of the process—

Mr. GRIJALVA. Referencing the statement that my colleague, Ms. Davis, referenced from yesterday, that internal communication in the Department of Education from January 10, 2017, concludes, “Given this extensive, well-documented, pervasive, and highly publicized misconduct, the Department has determined that the value of an IT&T education, like Corinthian, is likely either negligible or nonexistent. Accordingly, it is appropriate for the Department to award eligible borrowers full relief.”

So, though, do you agree that those loans before July 1, 2017, are subject to the Borrower Defense Fund standard?

Secretary DEVOS. They certainly are subject to the Borrower Defense Rule, but they are not subject or they are not automatically subject to full and complete forgiveness of every single loan.

Mr. GRIJALVA. Okay.

Secretary DEVOS. That is, I mean, even the prior administration, individuals acknowledged that there were up to 40 percent of the Corinthian claims filed that were not even eligible for consideration. And so—

Mr. GRIJALVA. But the 1994 standard—

Secretary DEVOS.—again, I go back, I am sorry, I go back to the fact that there was—

Mr. GRIJALVA. Madam Secretary—

Secretary DEVOS.—no process.

Mr. GRIJALVA. I have limited time.

Secretary DEVOS. There was no way to really consider these claims. I inherited no process. We had to create a process.

Mr. GRIJALVA. But the 1994 standard—

Secretary DEVOS. I understand that some of you here want to just have blanket forgiveness for everyone, anyone who raises their hand and files a claim, but that simply is not right.

Mr. GRIJALVA. No, I think most of us here want justice for these taxpayers that happen to be borrowers, for them to receive the relief that they need to receive. And the 1994 standards established that these claims are subject to state law standard, meaning those 20 states that found that the college engaged in fraud, those students are entitled to Borrowers Defense. And how many of these loans, pending loans, fall within that criteria of the loans that you are talking about, that we are talking about with Corinthian, and that are seeking relief from the Department? It is a question.

Secretary DEVOS. Is it a question?

Mr. GRIJALVA. Yes.

Secretary DEVOS. I do not have the specific number of Corinthian claims that are still pending. Perhaps General Brown can help.

Mr. GRIJALVA. Well, I think Judge Kim in her decision said, “This is a problem that the government created. Madam Secretary, you have an obligation to provide relief to those borrowers regardless of costs.” Do you agree with that?

Secretary DEVOS. We have an obligation to follow the rules and to follow the law and we have implemented a process that will actually allow us to do that. We had implemented one.

Mr. GRIJALVA. Well, in the defense of—

Secretary DEVOS. The court did not agree with the data we were using—

Mr. GRIJALVA. In the protection of taxpayers, we have to agree that seeking—that those seeking relief are taxpayers and the Department should be doing something about protecting them as well. Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. And I am going to have to be a little stricter with the time because we may run over. So, with that, Dr. Roe, you are recognized.

Dr. ROE. Thank you, Mr. Chairman, and thank you, Madam Secretary, for being here and your work on simplifying the

FASFAFSA form. And, General Brown, thank you for your service, sir.

Today, Madam Secretary, I would like to discuss your authority when it comes to awarding relief or a defense to repayment claim. I know this was discussed in your testimony, but I would like the record to be clear. If you believe General Brown can provide a more technical answer, please feel free to call on him. Many of the questions are a simple yes or no.

Number one, you have the authority under the law to provide borrowers filing a Borrower Defense claim full, partial, or no relief. Is that correct?

Secretary DeVOS. That is correct, Congressman, and I would love to refer everyone to Exhibit 5 that demonstrates or that shows the portion of the law that clearly states this. I think this has been a question for a lot of people and I want to make sure it is very clear that it is the Secretary's prerogative to have—to establish full or partial relief.

Dr. ROE. Thank you. The statute is silent on full or partial relief, but the regulation specifically discussed partial relief. Is that correct?

Secretary DeVOS. That is correct.

Dr. ROE. The Department defended partial relief in both the 2016 rule under President Obama and your 2019 regulations. Is that correct?

Secretary DeVOS. That is correct.

Dr. ROE. The lawsuit and ManriquezManriquez case is about the data used to determine partial relief. Is that correct?

Secretary DeVOS. That is correct. Not the methodology.

Dr. ROE. Okay. I know that many of my colleagues believe you should just reward full relief if you find there was harm, but you have decided, as you are authorized to do, to grant partial relief in some circumstances. Is that correct?

Secretary DeVOS. That is correct.

Dr. ROE. Simply following the statute on the rules. Can you please explain why you believe partial relief is important and what are some examples of where partial relief is appropriate?

Secretary DeVOS. Certainly. Well, the previous approach was either all or nothing and the new methodology that we have developed is a very scientifically defensible approach that looks at standard deviations from median earnings in a program and compares it to median earnings. So, if a claimant makes a claim against a school with regard to a specific program, we will take the median earnings data from that program, from that school, and compare it to like programs from other schools across the country. And if it is more than two standard deviations below that median, the individual would get a hundred percent relief. If it is between the median and two standard deviations, it will be a tiered relief. If they are earning more than the median for the rest of the schools, then they would not be entitled to relief. They cannot demonstrate that they have been financially harmed.

Dr. ROE. So, that seems very fair to me to be able to do it that way. If you have a situation where your earnings are what they said they would be, then I agree you should not have relief.

I would like to yield, Mr. Chairman, the rest of my time to the ranking member, Dr. Foxx.

Mrs. FOXX. Thank you very much, Dr. Roe. Madam Secretary, the Manriquez case is related to Corinthian borrowers, is that correct?

Secretary DEVOS. Yes, specifically to Corinthian borrowers.

Mrs. FOXX. Okay. And the plaintiffs in that suit are seeking relief from their loans because they claim that schools misrepresented their job placement rates, is that correct?

Secretary DEVOS. Yes.

Mrs. FOXX. Okay.

Secretary DEVOS. Primarily, they are primarily job placement claims.

Mrs. FOXX. Sure. And the plaintiff specifically challenged your methodology for determining partial relief, is that correct?

Secretary DEVOS. Well, I believe they were taking issue with the entire methodology and the court held that the data we were using was the issue.

Mrs. FOXX. Okay. And then the judge issued an injunction preventing you from using the methodology because it violated privacy protections, is that correct?

Secretary DEVOS. That was that judge's opinion, yes.

Mrs. FOXX. Okay.

Secretary DEVOS. We disagree with that and have appealed it.

Mrs. FOXX. That injunction prevents the Department from collecting on the loans of the covered borrowers while the case is pending, is that correct?

Secretary DEVOS. Correct.

Mrs. FOXX. Okay. However, there was a problem and those loans were collected, continuing to be collected on, is that correct?

Secretary DEVOS. Well, no. Let me put that in context. So, a couple of things I think are important to know.

First of all, before that court case was ever—or that injunction was ever handed down, I had directed that all of the pending student loan or student Borrower Defense applications be put in forbearance and also not continue to accrue interest. So, while this was going on for months and months and months, those students were not going to be sinking deeper and deeper into their whatever problem. So, that was done before the court injunction when the court—when the judge issued that injunction. That was already the directive and that directive was the policy or the practice that I expected would be carried forward.

After a year, there were some processing errors within Federal Student Aid and with our servicers, so, human beings made mistakes. As soon as we became aware of it, we said we acknowledge it and we will correct the issues, which we did immediately.

And I would like to ask General Brown to just talk briefly about the numbers and how quickly we have—

Mrs. FOXX. Madam Secretary, we will come back to that when we have a chance. I do not want to go over.

Secretary DEVOS. Okay.

Mrs. FOXX. Thank you.

Chairman SCOTT. The gentlemen from Connecticut, Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here today. Again, I just want to go back to your response to Mr.—Dr. Roe about—and again, you were very, I think, specific about the fact that your discretion, it is vested in you by the 1993 Student Loan Reform Act, allows you to provide both partial and full relief, that you just said that, is that correct?

Secretary DEVOS. Yes, yes.

Mr. COURTNEY. Thank you. Okay. And I appreciate that answer. Mr. Chairman, I just want to now enter into the record a memo dated December 14, 2017, published in the New York Times from Steven Menashi, who was a political appointee acting general counsel at the Department of Education to James Manning, who at the time had been delegated the authority to perform the duties of Under Secretary.

Chairman SCOTT. No objection.

Mr. COURTNEY. Thank you, Mr. Chairman. In that memo, Madam Secretary, Mr. Menashi, who is now Judge Menashi, wrote that, “It is now OGC’s position that the Borrower Defense Unit’s analysis that Department regulations in the Borrower Defense Statute allow the Secretary to assess relief at her discretion.”

Do you believe that this memo again provides you the legal basis to provide, in some instances, full relief to defrauded students based on your discretion?

Secretary DEVOS. I am not referring to the memo. I am referring to that section of the rule that existed in both the 95 rule and the 2016 rule.

Mr. COURTNEY. Great. Well, thank you, which again, basically says that you have that—

Secretary DEVOS. There is, yes, that the Secretary has discretion—

Mr. COURTNEY. Right.

Secretary DEVOS. And again, because there was no process in place—

Mr. COURTNEY. We agree. We agree. I am not—

Secretary DEVOS. There was no process in place and—

Mr. COURTNEY. Thank you for your answer. I just want to keep going here because on page 6 of the memo it goes on to say that, “In fact, the only limit to the Secretary’s ability to grant relief is that no student may recover in excess of the amount that the borrower has repaid on the loan,” which is certainly a commonsense statement. And I think we can all agree on that, that you cannot overpay with restitution. Is that correct?

Secretary DEVOS. Yes.

Mr. COURTNEY. Thank you.

Secretary DEVOS. I mean, I think that would—

Mr. COURTNEY. So, again, since you took office, I know you did process some of the pending claims from the prior administration, but after that cohort, have you provided any defrauded loan borrowers full relief since that first tranche?

Secretary DEVOS. Well, we could not, frankly, because the process was shut down and we could not—

Mr. COURTNEY. Let me talk about that because actually, if you look at the court order, which, again, shut down your partial relief program because of what the judge felt was improper use of Social

Security data, the judge actually stated, and I quote, “Nothing in this order prohibits the Secretary from fully discharging the loans of any borrower who successfully completed or who successfully completes an attestation form.”

So, I mean, she actually still left the door open for the Department to continue to process these Borrower Defense requests.

Secretary DEVOS. Yes. But without a methodology that we could access the appropriate data, we could not. I could not go ahead and say, we can just go ahead and forgive a whole bunch of loans 100 percent because, number one, each student, each student’s application needs to be considered individually. The circumstances are different and the facts are different. And so without a methodology to utilize, we could not continue to process. Now, we continued—

Mr. COURTNEY. So, the—

Secretary DEVOS.—let me just clarify.

Mr. COURTNEY. Okay.

Secretary DEVOS. We continued to adjudicate and we have many claims that are awaiting now being processed to be able to respond specifically to whether there was financial harm or not. And so now that we have another methodology up and running, we are going to be able to, I think, move through those fairly quickly. And—

Mr. COURTNEY. So, again, if I could just follow up with a question, again, because my time is about to run out. So, what I hear you saying is that these claims, after the judge’s order, stopped being processed because you, through your discretion, determined that they had to come up with another way of processing the claims. But again, that is not because the judge handcuffed you in terms of providing full relief. Her order specifically says that she left that door open for you. It really was your decision based on whatever priorities and policies that you had to not continue to process those pending applications.

I would just say Congresswoman Hayes and I have about 1,100 Borrower Defense applications from the State of Connecticut that have been sort of stuck in this queue during that time period. And that is based on June data; I am sure that the numbers have grown. ITT Tech is pretty much the driving institution, which is now defunct.

So, again, we at least made some progress here in terms of at least verifying what the scope of your authority is and my time has run out. So, thank you, Mr. Chairman.

Chairman SCOTT. Thank you. The gentleman from Pennsylvania, Mr. Thompson.

Mr. THOMPSON. Thank you, Chairman, thank. Thank you Secretary DeVos, for being here. Much appreciated. I will say, my friend, we worked a lot together and a lot of different issues were brought to my attention. I am appalled that this judge did what they did and what they put forward to basically providing a license to not to—just to allow the continued abuse. I appreciate the fact that you came into this particular position and, unfortunately, what you inherited from the last administration, which was really no structure, quite frankly, just providing loan forgiveness which we were warranted were harmed. I think that is important, but there is a duty and a responsibility to do this diligently in the right way. And so I appreciate that last, my colleague bringing that

up, brought that to my attention how abusive that this judge was with the ruling.

Madam Secretary, there are a few myths out there about the 2019 Borrower Defense regulation that I would like to discuss with you today. And General Brown might have some of the technical answers to these questions. So, please certainly feel free to ask him to answer if you believe that is better. Pretty straightforward.

The first myth is that the 2019 rule eliminates \$11 billion in relief. Is that true? If not, can you explain it for me?

Secretary DeVOS. Congressman, that is indeed a myth. The presumed savings assume and count on the fact that with much more clarity around a school's responsibility and what a student's claim would and could mean that we will have ultimately fewer Borrower Defense claims going forward. Let us just recall the fact that from 1995 to 2015, there were a total of 59 claims filed and then a 5,000 percent increase from 2015 to where we have almost 300,000 claims today.

And so going forward we have just released a ton of data on the College Scorecard that individuals—if an institution is making claims about a program, it is going to be easy to check. You can go to that school and that field of study and see what the earning is for the first year. And we are going to continue to add the data for years after that. So a lot more transparency for students and for schools, frankly. And so going forward, the savings are going to be around the fact that I—we are not going to have as many claims.

Mr. THOMPSON. Yeah, a great tool for financial literacy.

Secretary DeVOS. It is a good argument for financial literacy, yes.

Mr. THOMPSON. Yeah. Another myth is that the rule eliminates accountability for for-profit schools. Is that true?

Secretary DeVOS. Not at all. Indeed, it really treats all schools equally and I think that is one of the major deficiencies of the 2016 rule. It was strictly focused on for-profit institutions.

In fact, I saw some internal stuff at the Department saying we are not going to pay attention to any claims or any schools that had a liberal arts program because it is presumed that they are of the, you know, full value. Well, that is just wrong. I mean, if a student has a claim against a school for being fraudulent and deceptive, that should apply across the board to every school.

And we know that UC Berkley fudged their numbers to get bumped up rankings in U.S. News and World Report's college rankings. Should those be subject to Borrower Defense claims like the others were?

Mr. THOMPSON. And yet another myth is that the rule is cumbersome or overly burdensome to comply with from a borrower's perspective. Is that true?

Secretary DeVOS. No, in fact, we have made it very easy for students to find the information they need. It is prominently located on Federal Student Aid's website and we want to make sure that if and where there are these claims that are, you know, legitimate, that students have a very clear path to understanding how they proceed.

Mr. THOMPSON. Thank you. Chairman, I yield what little bit of time I have to our—the Republican leader, Dr. Foxx.

Mrs. FOXX. Thank you. And rather than ask a question, I am going to make a statement. Just tell me if I am saying this correctly. It was asserted before that the judge gave you discretion to go ahead and discharge these loans. But my understanding from you is, yes, you have processed all the applications and once you understand you have a way to do this that is not going to be challenged in court, then you will, what you say, adjudicate, meaning give an answer to the students, is that correct?

Secretary DeVOS. Close. I would actually love to have Exhibit 1 put up for the—

Mrs. FOXX. Next—well, okay.

Secretary DeVOS.—for the process because it shows where things are and I would like General Brown to actually speak to you—

Mrs. FOXX. Well, I am going to have to cut you off one more time, but I promise you the next time we will come to General Brown. Thank you, Mr. Chairman.

Secretary DeVOS. Okay.

Chairman SCOTT. Thank you.

Secretary DeVOS. We are going to get there yet.

Chairman SCOTT. Thank you. The gentlelady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman, and thank you, Madame Secretary, for being here today. Once again, I find myself agreeing with the ranking member.

We could be investigating other things today, but there are so many in this administration I don't know where I would begin. Maybe I would start with the three USDA rules that are getting ready to cut 4 million poor people off of SNAP, 1 million of them children. Or maybe I could talk about the daily travesty on our borders, but that is not what we are here to do today.

But it is unfortunate that my colleagues are suffering from amnesia on the other side of the aisle because I remember well how they treated the last administration. So they can't take this holier than thou kind of attitude. Let us all be nice and get along. I remember. I was here.

And the other thing I just want to bring to our attention is you talked about the two letters or less that you are getting every day. We get that every day, too, and we have a lot less staff than you do. So I don't feel it is something that is onerous and something that you cannot respond to.

Secretary DeVOS, is it fair or lawful to defraud students?

Secretary DeVOS. No, it is not.

Ms. FUDGE. Very good. Should those people that are defrauded be made whole?

Secretary DeVOS. If they have been financially harmed indeed they should, there should be relief for them.

Ms. FUDGE. Thank you very much. I yield the balance of my time to my colleague from Connecticut, Ms. Hayes.

Mrs. HAYES. Thanks, Secretary DeVos. Just really quickly, Mr. Chair, I would like to enter into the record the January 10, 2017, memo from the Borrowers Defense Unit to then Under Secretary Ted Mitchell.

Chairman SCOTT. Without objection.

Mrs. HAYES. Which this memo was drafted by your office after the previous administration left and I just want to say something. As I am sitting here and I am listening, I remember our last interaction where you at that point had also not read the memos that came from your office.

And I just find it just a total lack of regard that after the NPR story broke on Friday and you knew you were coming here for a memo about—I mean, for a hearing about Borrowers Defense, that you wouldn't even take the time to acquaint yourself with the memo that was talking about that your staff recommended that borrowers be given full and complete relief. I mean, there is nothing, as my colleague Congresswoman Fudge said, so incredibly onerous about 1.8 letters a day from Congress.

You have over 3,000 staff and a budget of \$60 billion around plus dollars. I get more than two letters a day and I make it my business to respond to them. So I am going to follow up about this same memo and I hope that—I mean, as you said before you don't know what anyone is talking about, you haven't read it, you heard of the story, but don't know the memo.

But in this memo, your staff recommended that full relief for borrowers who are enrolled in ITT colleges and campus be—in California, be granted. Can you explain why you ignored that memo and then why you did not include it in the documents that were sent to this committee?

Secretary DEVOS. Well, Congresswoman, once again, without having the document in front of me I am not going to continue to comment.

Mrs. HAYES. Did you not know you were coming here today?

Secretary DEVOS. Congresswoman, there are hundreds of documents written—

Mrs. HAYES. You are absolutely right and I would accept that—

Secretary DEVOS. And I would just—I would just—

Mrs. HAYES.—but the fact that on Friday this story broke and this document specifically was referenced, I don't think it is unreasonable. I know I am a freshman Congresswoman. If I were coming to a committee and I had taken the time to prepare and a document was revealed in an NPR story that went nationwide 5 or 6 days before the hearing, I would say to my staff, can you get this document for me so that I can read it for myself because I am sure that this committee will have questions in relation to this memo. That didn't cross your mind at all?

Secretary DEVOS. January 10, 2017—

Mrs. HAYES. No, Friday. Last Friday.

Secretary DEVOS. January 10, 2017, was the last administration.

Mrs. HAYES. Did it not cross your mind—

Secretary DEVOS. I was not in my office until February 7, 2017.

Mrs. HAYES. Did it not cross your mind when the story broke—

Secretary DEVOS. There are hundreds of documents that are pumped out from—

Mrs. HAYES. You are absolutely right, but on Friday, when this specific document—

Secretary DEVOS. And it is—

Mrs. HAYES.—was revealed, did it not cross your mind that maybe I should read it? On Friday?

Secretary DEVOS. No. I don't need to read the document—

Mrs. HAYES. So in December 2019—

Secretary DEVOS. I know what I have—

Mrs. HAYES.—when NPR ran a story, it didn't cross your mind that maybe I should read this document?

Secretary DEVOS. I don't need to read every document originating—

Mrs. HAYES. No, this one specifically. Not the thousands of others, just this one.

Secretary DEVOS. Because a news outlet chose to print it?

Mrs. HAYES. Yes. Is that a no?

Secretary DEVOS. I should read everything that a news outlet chooses to print?

Mrs. HAYES. Yes or no. Did it not cross your mind that—

Secretary DEVOS. I should read—

Mrs. HAYES.—you should read this document?

Secretary DEVOS. I am—ma'am, I am focused getting a—

Mrs. HAYES. So no?

Secretary DEVOS.—process right—

Mrs. HAYES. So no?

Secretary DEVOS.—for students and for taxpayers.

Mrs. HAYES. So no.

Secretary DEVOS. On getting a process right for students and taxpayers.

Mrs. HAYES. So no.

Secretary DEVOS. And that is what I am doing.

Mrs. HAYES. Part of getting that process right, requires reading. Thank you, Mr. Chair.

Chairman SCOTT. Gentlewoman's time has expired. The gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. And thank you, Secretary, for being here, General Brown as well. Again, January 10 was before the inauguration and February 17 was when you were confirmed. And I hope it doesn't concern my constituents too much that I don't read every article that is written about me either. There are certain articles that would be a waste of time and take me away from doing the jobs that I have been asked to do, especially when you know what you are supposed to do and follow the law.

Talk to us, if you will, about your Exhibit Number 1. Give you the opportunity this time.

Secretary DEVOS. So exhibit number—thank you, Congressman. Exhibit Number 1 shows the process through which we go with every Borrower Defense application. And I would like to ask General Brown to talk just briefly about it so we can understand where we have come, where we have brought the Borrower Defense claims to prior to having the new methodology to process.

General BROWN. Thank you, Madame Secretary, and thank you, Congressman, for that question. I would just remind the committee that overall, we are fastly approaching what will be almost 300,000 Borrower Defense applications by the end of this calendar year.

And each case is adjudicated on its own merit and what that means is there is no blanket way to do them all because they vary greatly in how, what data is there, and also the validity of each case without regard to which school the person went to, the student went to.

And we do not look at them per se by school. We adjudicate the individual cases. So the type of school is less of an issue than the validity of the case.

For every one of those cases, we bring them in that top bar that you see and we have our administrative people as well as our attorneys take them apart, look for supporting documentation and check the validity of that documentation. And this is the first part for the case. If it happens to be under the 2016 rule and the case is determined to, in fact, be a valid case, then the school would be notified under the 2016 rule and those going forward. Not all are under the 2016 rule.

At that point, the case would start the adjudication process. All cases get to that point. At that point, that is the Borrowers Defense regulations that you all have supported across administrations and we looked at this across administrations because only because those were the questions that we have gotten.

The percent of those that were valid and invalid really has held true. It has been about 62 percent to about 38 percent throughout both of those times and for the first 65,000 of those cases that have been completed, adjudicated, and processed back down to the students.

However, at that point, if the case is, in fact, either ineligible or eligible, if it is eligible, that is a point at which, as the Secretary said earlier, she has the discretion to determine some or a methodology that will determine some, none or all.

When you talk about a backlog, when you use that term, those cases got to that final point, had to be stopped, as you all have already referenced, by the Ninth Circuit and so that is the backlog. And it is the decision upon which the Ninth Circuit either answers the appeal or a new methodology has to be determined. And so when you use the term "backlog," that is what we are taking each case based on its individual merits through.

Mr. WALBERG. Thank you for that explanation. Previously, there was no official source a student could access to see college outcomes at the programmatic level. You recently unveiled new information on the College Scorecard that would allow families for the first time to compare programs within an institution or similar programs at different institutions.

Could you please explain what consumer information is included in this tool and how providing this information up front will help students make informed decisions before starting their school?

Secretary DeVOS. Sure, Congressman, I would love to talk about it a little bit more. Previously, you could go to look at a school, a cost of attending a school, average cost of attending a school, and then what the average earnings could be, would be expected for a graduate of that school. That is nice information, but it is not particularly useful for students based on programs that they choose.

Now, with this new data release and this new approach, you will be able to go look at a school and then go into the field of study

within the school and see what your cost is for attending that program and then what your earnings potential is, what the earnings have been for students who have graduated from that field of study their first year. And we are going to be able to add subsequent years as more data becomes available.

But this is going to give students a whole new tool to use in making—in decision-making around what kind of education to pursue post high school and it is going to be—it is useful for 2-year programs, for certificate programs. We are also linked to apprenticeship opportunities through the Department of Labor.

So a very robust set of data and important tools to be used for students as they begin to think about their futures and I think, importantly for institutions, to maybe ask some hard questions about some of the programs they have been offering that may not be, you know, the value for cost that they should be.

Mr. WALBERG. Glad to hear. I yield back.

Chairman SCOTT. Thank you. Before I recognize the next member, I would like to ask unanimous consent that documents, the document from January 10th from the Borrower Defense Unit, has been entered in the record. There is also a January 9th and an October 24—January 9, 19, 2017, and October 24, 2016.

These memos describe an extensive review of claims for Corinthian, ITT Tech, and Everest Whyotech where students—where the staff recommended full debt relief for borrowers from these schools. These memos, 14 pages, 14 pages, and 18 pages, reflect a clear process and evidentiary review conducted by the Obama administration. So that, we just want those in the record. The gentlelady from Florida, Ms. Wilson.

Ms. WILSON. Thank you. Mr. Chairman, for holding this hearing. I am so happy that Secretary DeVos' schedule has finally allowed her to address this pressing issue here today.

Madame Secretary, there are 200,000 students that are still waiting to have their Borrower Defense claims processed by your Department. The Education Department has not approved a single new claim for lone relief in the past 18 months. If a student takes out a Federal loan to study at an institution that behaved fraudulently or deceptively, that student's loan should be forgiven.

Mr. Chairman, tens of thousands of borrowers acted in good faith as they applied to school and took out loans looking to better their lives. Because of bad actors they were left with unfulfilled promises, outright lies, and mountains of debt. I believe that it is incumbent upon us to provide relief for those harmed by schools that acted in a fraudulent matter.

Secretary DeVos, you wrote with extreme displeasure on the document that discharged loans that had already been through the BD process prior to your appointment. Why would you write that? Why would providing relief to defrauded borrowers whose claims have been reviewed by experienced professionals displease you?

Secretary DEVOS. Congresswoman, very good question. Very simply, there was no process. The claims were simply forgiven without consideration for the individual circumstances.

Ms. WILSON. Secretary, I heard you say that.

Secretary DEVOS. Congresswoman—

Ms. WILSON. I want to tell you a story about a borrower from Florida named Jessica Matterson that gives me extreme displeasure.

In January 2017, Ms. Matterson was told her Borrowers Defense application had been approved and that her \$19,000 in student debt would be forgiven in 60 to 120 days. It was not. And instead, the government began garnishing her paycheck to recoup the money. As a result, she did not have electricity for weeks because her garnished checks couldn't cover the bills.

How is it possible that the Department of Education could have continued to collect Ms. Matterson's loans after she had already been approved for borrowing defense loan?

After the Washington Post wrote about her story in July 2017, the garnishment stopped. They did not refund her money. Just \$2,000 were refunded, was refunded of the 12,000 that had been garnished from her wages. Do you believe it is appropriate to not fully refund wages that were garnished for student loans that were deemed fraudulent?

Secretary DEVOS. Congresswoman, when a student's Borrower Defense claim is deemed to be—they have been financially harmed and we have a process to consider that, the level of that, the students are made whole and the students—we address each student's issue and situation individually. That is why it is important to have a process because every student's situation is unique.

Ms. WILSON. Do they get all of their money back—

Secretary DEVOS.—is unique and different.

Ms. WILSON.—that was taken from them?

Secretary DEVOS. It depends on the various claims. I can't—

Ms. WILSON. Because of these wage garnishments, Ms. Matterson could not afford to see a doctor to address the intense pain she was experiencing. When she finally did go to the hospital, she was diagnosed with cancer. In October of this year, she passed away.

Secretary, can you commit to me today that you will personally ensure that Jessica's wife will receive the remaining \$10,000 owed to her by the government?

Secretary DEVOS. Congresswoman, I can assure you that we can and will look into that specific situation if provided the details. And once again, I go back to the fact that all of these claims—

Ms. WILSON. Secretary DeVos—

Secretary DEVOS.—all of these student claims need to be considered individually.

Ms. WILSON.—I have worked in education my entire life. I have dedicated my life to this work and I have worked with Democrats and Republicans to advance the goal of quality education for young people.

I have had some honest disagreements with my friends in the Republican Party about how to move education forward, but I have never, not one time believed that they were out to destroy public education until I met you.

Why has every decision you have made harmed students instead of empowering them? Are you the Secretary of Education? You are supposed to be their champion. When you approach a public school, you are protested. If you enter, you are booed. When you spoke at

an HBCU in Florida, 2 months later, the president was made to resign.

You are the most unpopular person in our government. Millions will register to vote in 2020. Many will vote to remove you more than to remove the president. I yield back.

Mrs. FOXX. Mr. Chairman, I just have to say one of those last comments was over the line. Absolutely over the line. To say that Secretary DeVos is trying to destroy public education is going too far. And I believe every one of my colleagues agrees. We all sat up very quickly when that comment was said.

Now, I like Representative Wilson. She and I have talked a lot and we are very concerned about education, but that kind of comment cannot stand in this committee. The Secretary has come here to help us with our—oversight

Mr. TAKANO. A point of order, Mr. Chairman. The gentlelady is taking time that was not recorded.

Chairman SCOTT. The ranking member is making a point of order.

Mr. JOHNSON. Mr. Chairman, point – Mr. Chairman

Mrs. FOXX. Mr. Chairman, I believe it took—if that had been said on the floor of the House it would have been—those comments would have been taken down.

Chairman SCOTT. The—

Mrs. FOXX. Thank you.

Chairman SCOTT. The gentlelady's comments are well taken. Next person to be recognized is the gentlemen from Kentucky, Mr. Guthrie.

Mr. JOHNSON. Mr. Chairman, I have a point of parliamentary inquiry.

Chairman SCOTT. I am sorry. The gentleman from South Dakota.

Mr. JOHNSON. I am just a freshman, sir, so I don't know the rules backwards and forwards. Is there a mechanism by which a vote of this committee could strike those comments from the record?

Chairman SCOTT. Just a minute. The comments from the gentlelady from North Carolina have been part of the record so I think we have both sides and I think we have agreed with the ranking member.

Mr. JOHNSON. Mr. Chairman, my point of parliamentary inquiry is—

Chairman SCOTT. And we should—

Mr. JOHNSON.—whether or not we should—

Chairman SCOTT. We should refrain from questioning the motives of the members.

Mr. JOHNSON. Thank you, Mr. Chairman.

Chairman SCOTT. And the witnesses. Thank you. The gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you. Thank you, Mr. Chairman, appreciate the opportunity to be recognized and sorry that the tone in Washington has reached the way it has reached the last year. I apologize for that.

As somebody that has been here for a while, we hate to see it has deteriorated the way that it has. We need to be working to—

gether to get big things done for this country and, unfortunately, we are where we are. But I want to get to my questions.

I am sure you are—you agree that Congress has a responsibility to do oversight of the administration and I believe you said that 95 percent of all congressional requests have been met. You said that earlier?

Secretary DEVOS. With regard to the letters—and let me, yeah, let me just add, you know, the 1.8 letters are not just like constituent nice, can you respond with a half-page or a page response.

These are voluminous responses required that require a lot of research to respond to and often hundreds, if not thousands, of pages to be responded in each of them.

Mr. GUTHRIE. I was going to ask if it included phone calls, emails, and written response, and I think you answered that.

Secretary DEVOS. Well, but no, these are voluminous responses of writing.

Mr. GUTHRIE. And long ones as well. And I am sure you agree that it is important for all parties involved to communicate directly, that is what you said. So I am going to get to this hearing.

I agree that borrowers are harmed—borrowers that are harmed should be granted relief as quickly as possible. After diving into some of the nuances about this issue, I understand why you have decided to grant partial relief in some cases.

Now, it is my understanding that there was a report that estimated the Borrower Defense claims would be cleared by the spring of 2017. But your decision to review those cases and grant partial relief meant that the estimate proposed in the report would not be met. Is this correct?

Secretary DEVOS. Yes. Again, Congressman, there was no process and short of simply deciding to forgive all of the, and accept all the claims with 100 percent validity or not, we needed to get a process in place to consider each claim.

Mr. GUTHRIE. So the—thank you. So the memo I just mentioned, was that an official memo that included promises or any guarantees to borrowers?

Secretary DEVOS. I am not sure what memo you are referring to.

Mr. GUTHRIE. It is the one that said about spring of 2017 you would—so, but anyway, so it wasn't official. So I will get to this.

So there wasn't anything illegal about your decision, about your determination. It was the best interest of taxpayers to review these claims and make sure the relief granted was correct.

So I guess my question is there was nothing legally requiring you by the spring of 2017 to make those decisions and you made the decision to put in a process that made sure that fraudulent claims were paid, but need to make sure their claims were fraudulent and so you made those. So nothing illegal about where you are today about not getting that done by 2017?

Secretary DEVOS. No. It was a matter of building on a lack of policy and process from the previous administration. The policy of the previous administration was to simply forgive claims.

However, there was also some opinion expressed that up to 40 percent of some of the claims that had been submitted did not qualify. So again, without a process and a framework, we couldn't pro-

ceed and progress any of those claims forward, which is exactly what we did when coming into office in 2017.

Mr. GUTHRIE. Thanks, I appreciate that. And I want to yield to the ranking member or the Republican leader.

Mrs. FOXX. I want to thank the gentleman from Kentucky. I want to point out, I want to make several clarifications.

Number one, some of our colleagues don't know evidently the calendar in 2017. Because the memorandum under consideration hereunder that has been brought up was a memorandum to Under Secretary Ted Mitchell who worked in the Obama Administration.

The Obama Administration was in office until January 20 when the President, President Trump, took office. You again pointed out you did not come into office until February. So if they have an argument with anybody, it ought to be an argument with these folks who got the memo on January 10. This sounds like a lot of other memos that came out around that time.

I would also like to point out that contrary to what has been said, that for-profit schools have no value, 1995 was when Borrower Defense rules went into effect. Corinthian Colleges were formed in 1959. ITT was around since 1969.

Between the time Borrower Defense went into effect, as you said, Madame Secretary, until 2015, 59 claims were filed. So obviously, something happened. Yes, those schools closed. But there has been a culture change I believe in our country in terms of what people believe they are owed.

Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you. The gentlelady's time has expired. The gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you, Mr. Chairman. Thank you, Secretary DeVos, for being here. And thank you, Mr. Chairman, for introducing into the record the January 9 and January 10, 2017, memos.

Secretary DeVos, when you made opening remarks you said that some on this committee suggest full relief for defrauded borrowers. The point is that it is not just some on this committee. It was the Borrower Defense Unit in the Education Department as well, people who had been working on these cases. That is the point.

And, Secretary DeVos, the mission of the Department of Education is to promote student achievement in preparation for global competitiveness by fostering educational excellence and ensuring equal access.

And when I look at how the Department and you have been handling the borrower defense cases, I just don't see that is consistent with the message and the mission of the Department. With so many hundreds of thousands of students, including thousands in my home state of Oregon, stuck with loan balances and a worthless degree if they even got a degree.

I am a former consumer protection lawyer for the Federal Trade Commission and I know fraud when I see it. And these students were misled and cheated, and the fact that some of them may be making money doesn't mean that they weren't defrauded.

If somebody went into one of these programs hoping to become a nurse, for example, and now they are selling clothes at a depart-

ment store, it doesn't mean that they weren't defrauded. And I hope you can put yourself in the shoes of some of these borrowers.

I know it is challenging, but they went to try to find a better path for themselves and instead of getting a good education, they got collection notices and wage garnishments. And in September, the Department admitted to violating a court order by illegally demanding loan payment from more than 16,000 Corinthian borrowers seeking Borrower Defense. And that number has now increased to 45,000.

And the issue came to the public's attention only after you were held in contempt for violating a court order. So this is not a new problem. In fact, more than a year ago, a court ordered the Department to stop seizing tax returns of Borrower Defense applicants. That was the Williams case.

So, you and the Department have known about this issue for years. So why did the Department continue to bill more than 16,000 Corinthian borrowers in violation of the law?

Secretary DEVOS. Well, Congresswoman, I am sorry you weren't here when I talked about that earlier on, but what we said, what I said, was it was very clear that the borrowers that made claims for Corinthian College programs were in forbearance, were not accruing interest per my direction prior to the court order in—court injunction in May of 2018.

Since then, a year later, there were errors made within Federal Student Aid and with some of our servicers. Human errors that once we were, became aware of them we immediately acknowledged and immediately went to work to correct and rectify the problems for those impacted students—

Ms. BONAMICI. And I am going to reclaim my time and ask another question.

Secretary DEVOS. And it is not—it is 99.8 percent—

Ms. BONAMICI. Secretary DeVos, I am going to reclaim my time and ask another question. And I was here, I just didn't find the answer satisfactory.

How many times has a court already found that the Department has illegally collected payments from borrowers or sieged their—seized their wages or tax returns?

Secretary DEVOS. How many times? It was—

Ms. BONAMICI. Have other courts found that?

Secretary DEVOS.—in relationship to the court injunction from May 2018 and General Brown can comment to the specific numbers of impacted borrowers. And frankly, what we—

Ms. BONAMICI. Just for the record there were other—

Secretary DEVOS.—have done—what we have done to—

Ms. BONAMICI.—cases as well.

Secretary DEVOS.—to make sure all of those cases were addressed and taken care of, which they have been.

Ms. BONAMICI. And you say, Secretary DeVos, that you care about the responsible use of taxpayers' dollars. So the judge in the ManriquezManriquez case imposed sanctions in the amount of \$100,000 for violating an injunction. So who paid that? You personally or the taxpayers?

Secretary DeVOS. I am not aware that it has been paid. It is an injunction in a judgment against the Department of Education. So—

Ms. BONAMICI. So you are not aware if it has even been paid?

Secretary DeVOS. I don't believe—I don't know. I can—

Ms. BONAMICI. And who do you expect to pay that? Will you pay that personally or will the taxpayers pay that?

Secretary DeVOS. Well, I think there is an appeal to suggest that it is not appropriate to fine a Federal—another Federal department.

Ms. BONAMICI. So in my remaining time, it was the borrowers who discovered that the Department was billing them improperly. This is not a result of the Department's oversight.

So we know there are many Borrower Defense claimants who are watching today. How are you going to assure them that you are doing everything in your power to help them get relief and that they won't have their wages garnished or their tax returns taken in the future?

Secretary DeVOS. Well, I am very hopeful that we will be able to continue to move ahead with our new methodology and assuming no challenge from through the courts of that methodology, we will be able to process these claims that have been pending for many years—

Ms. BONAMICI. And that is the methodology that if—

Secretary DeVOS.—and that is—

Ms. BONAMICI.—someone is making money, they weren't defrauded.

Secretary DeVOS.—a focus. That is a—

Ms. BONAMICI. And that is not justice, Madam Secretary, and I yield back.

Chairman SCOTT. Thank you. Before I recognize the next witness I would like to enter into the record a OIG report in response to this report. The present Department of Education FSA stated by the previous administration's process for adjudicating claims they said, and I quote, "Despite these challenges, we are pleased to note that the OIG did not identify any errors in adjudicated claims, that the review for each of the sample claims was properly documented. In addition, OIG found that FSA created policies and procedures for Borrower Defense that have evolved over time as FSA has continued to redefine its processes."

The OIG report is dated December 8, 2017, so that is during the present administration. Without objection, so ordered. And the gentleman from Alabama.

Mr. BYRNE. Thank you, Mr. Chairman. Secretary DeVos, General, thank you for your service to our country. It is not often said enough, but people like you have given a lot to this country and continue to do so. We appreciate you being here today and we appreciate your service.

I am going to ask some questions about oversight and I am going to direct them to the Secretary, but, General, if it is something that you need not be the one to answer to just feel free to jump in.

Let us just begin with the basics. Do you believe in the need for congressional oversight?

Secretary DeVOS. I do, Congressman.

Mr. BYRNE. Well, I think your presence here today proves that, but I wanted you to be on the record to say that you believe in it. Have you informed your staff of the need to be responsive to Congress to help us do our job?

Secretary DEVOS. Indeed I have. I am very keen on making sure we are responsive and have repeatedly directed all of my team that we must be and we must do so in timely fashions.

Mr. BYRNE. And how do you follow up with them to make sure that they are doing that?

Secretary DEVOS. Have regular reporting relationships depending on the area and the department. And with respect to the issue that we just talked about, I get daily reports on how those claims have been restored back to their standing that they should be in forbearance and we are continuing to have regular dialogue and updates on those. And, General Brown, did you want to?

General BROWN. Yes, sir. I can provide you one example of those daily reports. On Exhibit 7, we are asked for all of those students that had some element of error that were involved in the ManriquezManriquezs case when they were erroneously put out, taken out of forbearance and perhaps billed. Since that time, we have done daily reports on each one of those cases.

This is not a report that we created for this committee. In fact, it is 2 days old. It talks about .5 or so percent of those cases having not been remediated, and today that is actually less than 30 of those cases that have not been remediated.

We are responsible for giving that report to the Secretary each day. And even if it is at 99.5 percent, we won't be through doing that daily report until it is 100 percent, meaning every particular person, specific person that had any element of harm done to them has been corrected.

So if they had a Treasury offset, like I heard earlier in the statement, that the Treasury would have had to refund that money for us to put them in a remediated status. And that is one way that we provide oversight of this process and in responsiveness to the Secretary's request.

Mr. BYRNE. Well, thank you. That was very helpful. Thank you for providing that to us. Now, I know you get multiple requests from the same member or several members of Congress.

How do you prioritize requests when you get multiple ones from the same member and what kind of communication do you have in place to ensure that your staff is still able to meet the standard for response that you have set?

Secretary DEVOS. Well, our prioritization is really based on responsiveness in general. And we try to be—we try to be able to respond within 30 days of receipt of one of those requests.

Sometimes it has to go longer than that depending on the volume of material requested and required, but we are very focused on ensuring that we continue to work through these issues as promptly as we possibly can.

Mr. BYRNE. And I think you have already said this, but you can remind me. What is your response rate to Congress since you have taken office?

Secretary DEVOS. Ninety-five percent.

Mr. BYRNE. Pretty good. Some of us would like to have that rate in our—with our constituents if I might say. Is there a different standard for oversight in the Federal Student Aid office and in other offices at the Department?

Secretary DEVOS. No, we have high expectations for ourselves across the board.

Mr. BYRNE. And, General, this may be for you. How does the FSA balance a request for data and information with the need to get your job running the loan program done?

General BROWN. I thank the Congressman. We—our desire is to answer all correspondence within 30 days. However, I will tell you that those that are very data-centric that require special pulls from what is 11 loan servicers across the country, often will require more time because that data simply doesn't exist in the systems that we are working to reform. But all—for most data requests we try to do those within 30 days.

Mr. BYRNE. Thank you for that. Thank you for your hard work and trying to be responsive to Congress and trying—and thank you for your professionalism and for understanding that the taxpayers' money is precious and that we have a responsibility, all of us, including those of us in Congress, to safeguard that money.

And with that Mr. Chairman, I yield back.

Chairman SCOTT. Thank you and I will remind the members to please direct the questions to the Secretary. The gentleman from California, Mr. Takano.

Mr. TAKANO. Madame Secretary, you have twice testified today that all pending claims in the Manriquez case you had ordered the forbearance and not to collect interest prior to that court decision of 2018. And you referred to processing errors were made a year later.

Are you aware, in fact, that your Department submitted in a compliance report to the court on October 8, 2019, that the compliance errors that we are talking about at issue were not the result of willful or intentional conduct on the part of the Department, but as the court has recognized gross negligence, including negligent oversight over the Department services. You are aware of that. That is your own Department's words. Are you aware of that?

Secretary DEVOS. Congressman, what I know is that once we became aware—

Mr. TAKANO. It is a simple yes or no question. I have many questions.

Secretary DEVOS. Yeah, I know, but it is not a simple yes or no answer.

Mr. TAKANO. No, but it—I am just asking if you are aware that is what is in your own Department's submission to the court, that your Department conceded that it was gross negligence for the loan processor error.

Secretary DEVOS. There were human errors made on both Federal Student Aid's end of things as well as certain—

Mr. TAKANO. Madam Secretary, on November 21, 2019, your Department—by the way, I wanted to enter this into the record, Mr. Chairman. The statement of the Department, their response to the court.

Chairman SCOTT. Without objection.

Mr. TAKANO. Madam Secretary, on November 21, your Department held its first-ever quality assurance and performance meeting with executors from all the loan services to review the Manriquez case. Why did it take your Department—why did you and your Department take 18 months for this first meeting to occur with your loan service providers? Why did it take 18 months to do that?

Secretary DEVOS. The loan servicers are—we are continually in dialogue with the loan servicers. I think—

Mr. TAKANO. It took you 18 months to have your first meeting with these executives.

Secretary DEVOS. Congressman, it—you—

Mr. TAKANO. Why did it take so long to do that?

Secretary DEVOS. Are you interested in learning or are you just interested in making a point?

Mr. TAKANO. It is a simple question, why did it take so long for you to meet with these loan servicers?

Secretary DEVOS. I am very pleased with the leadership of General Brown, who came to Federal Student Aid 9 months ago, assuming the chief operating officer role. He is responsible for the operations of Federal Student Aid—

Mr. TAKANO. Madam Secretary, he came on board much later in the process.

Secretary DEVOS.—as well as the relationships with the loan servicers.

Mr. TAKANO. Moving on, Madam Secretary, on May 25, 2018, a Federal Court ordered you to stop collecting on former Corinthian borrowers in the Manriquez case. Seventeen months later in October 2019, Federal Judge Sallie Kim was highly critical of you and your Department's attempts to comply with the preliminary injunction and she stated it consisted of inadequate communication with each of your nine loan service providers.

Is it correct that your Department's only communication with loan service providers during this time was through email?

Secretary DEVOS. No, that is incorrect.

Mr. TAKANO. Mr. Chairman, I would like to enter into the record the emails cited in Judge Kim's order. One email only was three sentences long. The other emails to loan service providers didn't even cite the fact that the Department was under a court order.

Chairman SCOTT. Without objection.

Mr. TAKANO. The judge was astounded, Madam Secretary, that your Department only sent emails and did not have in-person meetings or phone calls with the loan service providers explaining the court order.

Judge Kim asserted that would have been normal for any entity under such a mandated court order to have in-person meetings with the contractors immediately following the preliminary injunction and not several months later on November 21, 2019, which is 18 months later.

Mr. Chairman, I have already asked you consent to enter the emails. Mr. Chairman, I want to point out that on May 29, the May 29 email was only three lines providing instructions to loan servicers, and on July 5 the email that they sent to an additional five servicers contained no mention of the preliminary injunction.

Madam Secretary, who at the Department did you assign responsibility for ensuring that the loan servicers complied with the preliminary injunction?

Secretary DEVOS. Congressman, I am very pleased with General Brown's leadership at Federal Student Aid. He is responsible—

Mr. TAKANO. When did Mr. Brown come on board?

Secretary DEVOS. Congressman, can I please finish my sentence?

Mr. TAKANO. When did Mr.—my question was when did you assign—who did you assign responsibility for compliance?

Secretary DEVOS. Federal Student Aid has a chief operating officer responsible for the operations of Federal Student Aid. General Brown is responsible as the chief operating officer—

Mr. TAKANO. When did he come on board?

Secretary DEVOS.—for those operations. He assumed the COO role 9 months ago. He was with the Department for 4 months before that. And prior to that—

Mr. TAKANO. So he was responsible—

Secretary DEVOS.—there were acting individuals.

Mr. TAKANO. You immediately assigned him responsibility to ensure that your department complied with the court order? Who did you put in charge?

Secretary DEVOS. We have continued to be intentional about complying with the court order. We have acknowledged that mistakes—

Mr. TAKANO. Madam Secretary, you are going to answer my question?

Secretary DEVOS. Can I finish?

Mr. TAKANO. Who did you assign responsibility to comply with the court order for your department?

Secretary DEVOS. Chief operating officer of Federal Student Aid is responsible for the operations of Federal Student Aid.

Mr. TAKANO. You are referring to Mr. Brown, but he didn't come into this role until 9 months ago.

Secretary DEVOS. There was an acting chief operating officer who—

Mr. TAKANO. Who was that?

Secretary DEVOS. That preexisted him. It was James Manning as an acting. And prior to that there—when I came into the Department I inherited a chief operating officer who left his role rather than come and testify here before you.

Mr. TAKANO. I yield back, Mr. Chairman.

Chairman SCOTT. The gentleman's time is expired.

The gentleman from Indiana, Mr. Banks.

Mr. BANKS. Thank you, Mr. Chairman.

Secretary DeVos, thank you for your service and your leadership. A lot of discussion today has been about what happened in the past on this issue, but I want to take a moment and focus on steps moving forward.

General Brown might have more of the detailed answers to my questions, so feel free to have him answer if you prefer.

First of all, for the borrowers that are waiting for relief, when can they expect to hear from the Department on whether they are eligible for relief? And if a borrower is indeed eligible for relief, approximately how long will it take for an individual to hear how

much relief they are going to receive? Will it take years or are you working to make sure the borrowers are aware as soon as possible?

Secretary DEVOS. Congressman, thanks for that question.

Now that we have a new operable methodology, we are going to be able to process the pending claims much more quickly, assuming we don't get stopped in some way by a court order.

General Brown can comment to the specifics of how quickly those claims can be processed, but I know that he has continued to increase the staff in this area to be able to really address them in a very timely manner and has hired many additional attorneys to be able to look at each claim individually, as it must and should be done.

General, would you like to comment to the timing?

General BROWN. Yes, Madam Secretary. I would say that within the last—even within the last 24 hours we are notifying students of their eligibility or ineligibility if they have given—if they have provided a claim. We continue to do that. Those claimants, they would know now and if they got relief they would know so within the next—or actually have it done within the next 60 to 90 days.

I would also say though that the staff at its height was 14 in previous years. We have more than tripled that with a special emphasis on hiring attorneys. And, frankly, the more of those that you have the quicker you are able to get to these cases. So minus any litigation, we expect to get to those cases fairly quickly.

But another part of this is the system, which we have been rebuilding over the last 12 months and that system's platform is ready.

So to answer your question, Congressman, we expect to clear the majority of this backlog, minus any further litigation, over the next 12 months.

Mr. BANKS. Do you have the staff that you need to do that currently?

General BROWN. So I am happy to say that both the systems and the authority and resources to hire the personnel has been given to us by the Secretary and we have either hired them or are in the process of on-boarding them.

So, again, minus any litigation, we have what we need or will have very shortly.

Mr. BANKS. Are these permanent or temporary staff people?

General BROWN. The majority of them—some of them are what we would call term employees. We did that out of consideration and out of stewardship, frankly, for the fact that we would not expect to forever receive what we are receiving now, which is somewhere in the neighborhood of 1,200 cases per week. So these are temporary 3-year term hires and we will see at that point if we need to extend them further.

Mr. BANKS. Secretary, who is involved in how a final decision on relief is made? Do all of the Borrower Defense claims come to General Brown or you for final approval? Or are lower-ranking employees empowered to make that final decision?

Secretary DEVOS. Well, Congressman, I have approved the policy, the process for which—by which these claims will be determined. And it is General Brown and Federal Student Aid's role to implement that policy and see through the processing of the claims.

It is really a mathematical scientific formula and approach, so the policy lays out that framework clearly.

Mr. BANKS. Okay. Let me change my line of questioning just a little bit. Borrower Defense seems like an inefficient way to protect taxpayers from fraud, given that the government is losing money in the end. What reforms are you making to help prevent the need for borrowers to use this provision in the first place?

Secretary DEVOS. Congressman, thanks for asking about the College Scorecard. We have made considerable changes to and enhancements to the data available to students and, frankly, broadly to taxpayers and institutions. So now, prospectively, students can look at the cost of a college program, a field of study, what the cost is going to be, and what their earning potential is the first year after. We will be adding data and information to that as subsequent years become available. But this is going to help clearly reveal whether the value for a program is there. And, frankly, I think it is going to help a lot of schools make some decisions about whether to continue programs that they have been offering as well.

Mr. BANKS. Thanks to both of you for being here and thanks for always being willing to answer my questions and provide anything that our office needs along the way as well.

With that, I yield back.

Chairman SCOTT. Thank you. The gentleman from New Jersey, Mr. Norcross

Mr. NORCROSS. Thank you, Mr. Chairman, and, Madam Secretary, thank you for being here today.

I want to start out by saying I agree with my colleague on the other side that we wish that we would work together much more often. So let us see if we can start with you and I, that we get direct responses to direct questions and be respectful of each other, which is something that I am sure you want to do.

Let me start out by asking you about the partial relief formula that uses the College Scorecard data. Talk to me about that, how after 18 months I guess since the court order you rolled this out, why you thought this was the best Scorecard, particularly when you only have 20 percent of the programs involved in that now. How did that become the best one?

Secretary DEVOS. Well, Congressman, just to be clear, we are using several different data sets to—

Mr. NORCROSS. But aren't you using the Scorecard?

Secretary DEVOS. As one of the data sets, yes.

Mr. NORCROSS. And do you agree that it only has 20 percent of the programs?

Secretary DEVOS. Yes. Well—

Mr. NORCROSS. Okay. So please continue.

Secretary DEVOS. So we are using several different datasets and in looking at each Borrower Defense application the field or the program of study that the applicant is claiming was fraudulent in some way, the median income for that program is compared against the median income for programs, like programs—

Mr. NORCROSS. Yeah, I understand, but—

Secretary DEVOS.—from other institutions.

Mr. NORCROSS. But what are—you were going to tell us what else you were using.

Secretary DeVOS. The other pieces that we are using are Social Security Administration data and the 2017 Gainful Employment Earnings data and IRS information.

Mr. NORCROSS. But they don't reflect back to the individual programs that people are looking for. So if my son goes to look at it and says, gee, let me go to the Scorecard, that is the only piece of information that program would reflect what the reality is, even though it is 20 percent.

Secretary DeVOS. The College Scorecard actually—the programs that are included include about 80 percent I believe—80 to 85 percent of the students pursuing fields of study. The smaller programs that are not included in College Scorecard are simply because the cohorts are too small to be able to consider.

Mr. NORCROSS. Well, actually, it makes up 80 percent of the entire programs, so it is the exact opposite. And it only has 2 years.

So if it took you 18 months to come up with this new one, it just seems to me to use something that is such a small part of the solution of what is actually going on, because you agree with me you are trying to get students, potential students that information, right? So that they can make an informed decision.

Secretary DeVOS. We are trying to consider each student's claim individually and the circumstances.

Mr. NORCROSS. No. No, this is being used, the Scorecard, to give potential students an idea of the cost involved and the outcomes. We understand that. But using only 20 percent—and, General, thank you for your service, but I guarantee you wouldn't want to send somebody into a warzone with only 20 percent of the information.

The point I am trying to make here is—

Secretary DeVOS. It is 20 percent of the programs, but it represents 80 percent of the students attending higher ed institutions.

Mr. NORCROSS. But 80 percent are the smaller programs—

Secretary DeVOS. So it is a pretty significant number.

Mr. NORCROSS. Can we agree that the program information is less than you would desire and I would desire?

Secretary DeVOS. We would love to include additional programs—

Mr. NORCROSS. Okay, so that is the point I am trying to make.

Secretary DeVOS.—but we need to have larger cohorts.

Mr. NORCROSS. Because when we looked at this—and again, let us be respectful of each other's time here—10 percent relief for the Corinthian borrowers, you made the decision to give them 10 percent whether your new formula was involved or not. I have a disabled vet in my district; ITT Tech, which is one of the horror stories, he went there for a digital design degree. The school told him he could use his GI Bill. Long story short, he used those stipends to pay for this and then he found out ITT lied to him and he is into a \$50,000 student loan. Now he has got no job, no degree. I know that tugs at your heart, as it does mine. You know, why is it the Corinthians will get a 10 percent flat over there, but this young man who defended our country gets nothing until you get to his application? How did you decide they are worthy, but this veteran wouldn't be because he was in a different program?

Secretary DEVOS. Sir, the Corinthian students have had their institution attacked mercilessly in the media for years, and so in consideration of that and the consideration of the length of time that has lapsed since we were first able to process a number of those claims before the court shut us down, the determination was made that all of them would receive at least some—some level of relief depending on—

Mr. NORCROSS. So because of media reports you are going to give them 10 percent, but this veteran—listen, my time is expired.

On behalf of all those students, which I know we all care about, this is impacting their life. I can't suggest to you how important this is to expedite this in a fair and balanced way.

Chairman SCOTT. The gentleman's time has expired.

The gentleman from South Dakota, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. Thank you, Madam Secretary.

I found myself most interested on the conversations we have been having about the new methodology, so I just wanted to learn a little bit more about that. You have talked a number of times about using the median rather than the—I think the median salary for individuals in these groups. Why does the median make more sense than the mean?

Secretary DEVOS. I am not a mathematician, but the median methodology and the standard deviation methodology is a scientifically proven approach to be able to consider these individually and yet fairly. And so the goal was to have an approach that would not only allow for full relief if the student is significantly financially impacted, but also partial relief if there is some financial impact, but not as significant perhaps as others.

Mr. JOHNSON. So when we—I mean the heart of this methodology really comes down to comparison to peer groups and peer academic programs. How do you decide what that cohort of comparison programs looks like?

Secretary DEVOS. Well, there are similar programs with codes that are considered for each of those programs and they line up across the board. The previous questioner's line around the percentage of programs included in the College Scorecard, captures—the data captures the bulk of the students and the programs that students have and are attending. And so there are always like comparisons to be able to use when using the new methodology.

Mr. JOHNSON. So we have had some discussion today about to what extent the new methodology is fair or unfair to people who have gone on to better themselves, maybe through, you know, extraordinary efforts on their own. Talk to us a little bit about the methodology and whether or not you think it fairly has an impact on students given their different economic salary outcomes in the years after their education.

Secretary DEVOS. Well, it actually looks at program to program versus their specific salary. So if an individual has done very well themselves financially, but they have a claim against a school and that particular program, that is what the comparison—that is the comparison that is made between the programs.

Mr. JOHNSON. So that is an important distinction. I mean, if somebody—I mean, they get credit or dispensation for the average

impact, negative impact of their program. In that way their extraordinary efforts, that would accrue benefit to them. They wouldn't be punished for that. Am I saying that right?

Secretary DEVOS. Correct.

Mr. JOHNSON. Okay. And then I want to talk a little bit about the timeline for applying for relief. I think if memory serves, your new rules allow for a 3-year filing timeline. Number one, is my memory right? Number two, why is that the right timeframe?

Secretary DEVOS. We decided on a 3-year timeframe because following a completion of study in a program, 3 years after seems to be a reasonable amount of time, particularly considering the fact that generally speaking, if there was a claim to be made, that presumably would have occurred at the beginning of the decision to take that program. So the length of time that a student has is really I think pretty substantial. Because it could be up to 7 years, frankly.

Mr. JOHNSON. Do we have a sense—I mean, you talked about how—and I don't want to put words in your mouth—so pushback if I am categorizing your statements wrong, but I think you all had a methodology you were pretty happy with. The courts have told you can't use that particular data set. When you spoke about that earlier it didn't seem as though you had any idea of a timing on a final decision. Is that right?

Secretary DEVOS. That is correct. We have appealed that decision. We believe the dataset was a viable use and the court has not yet opined for over a year.

Mr. JOHNSON. So have all legal filings been made before the Appellate Court? I mean, are all the parties, all their stuff is in, we are just waiting on a decision?

Secretary DEVOS. We are waiting on the court's decision, yes.

Mr. JOHNSON. Okay. Very good. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you. The gentleman from New York, Mr. Morelle.

Mr. MORELLE. Thank you so much, Mr. Chairman, for hosting this hearing. And thank you, Madam Secretary, for being here this morning to answer our questions.

I do find interesting the conversation about taxpayers' rights and interests versus students who have made claims. And I suppose one way to save taxpayer dollars will be to deny all the claims, and I am not suggesting you say that, but I just find it interesting. What we need to do is find balance because if we simply just denied all the claims that would neither be legally or, in my view, morally defensible. But it would certainly save taxpayer dollars. So we obviously want to strike the right balance here.

I want to just touch on a few things that I find interesting about the Department rules. One of them relates to what they call frivolous factors. And I want to read, under the new rule the Department states institutions that include the nicest dorm on campus as part of the college tour cannot guarantee that every student will have the opportunity to live in that dorm. How many students have submitted a Borrowers Defense claim that they didn't like their dorm room? Do you either know the number or percentage?

Secretary DEVOS. I don't have the number for that, but I do have a case file of one that submitted a claim who is trying to claim Borrower Defense for the fact that he or she did not like their professor.

Mr. MORELLE. Okay. But as it relates to—in the rule it actually cites the nicest dorm rule and I am just curious whether or not you could follow up to determine—since it is in the rule, I assume that there were concerns that claims had been made by students that they didn't get the nice dorm room that they saw on the tour.

Secretary DEVOS. There have been a number of different quite unbelievable claims made.

Mr. MORELLE. Can you give me a sense of how many frivolous claims in your view the 2016 regulations allowed to be—forced the Department to discharge?

Secretary DEVOS. I don't have a specific number to cite because not all of those claims have been not only adjudicated but processed. But I do know that there have been a number of claims made that, you know, your jaw would drop if you actually read the reason for their claiming fraudulent activity.

Mr. MORELLE. I am not sure my jaw would drop, but perhaps other people's would.

But, one of the things that I was struck by in reading through this, and I am relatively new to this, my background is in the New York State legislature and we obviously are heavily involved in higher education, but not Federal programs, but the new rule states that it made the changes to the application process so “borrowers shop wisely, take personal responsibility for seeking the best information available, and make informed choices and accept the benefits of student loans with the full understanding that they generally are legally obligated to repay these loans in full.”

I was struck by some of the conversation because the institutions that qualify for this and the guaranteed loan program, the requirement is that they be accredited, either by a national or regional accreditation organization. And given the nature of some of the students, particularly that attended Corinthian and other schools that have had claims of significant fraud, it seems hard to me as just an average citizen that you would put the burden on an individual who is looking to go to school. And these are in often cases, non-traditional students. So they are at work, they may have families, they are challenged, but they want to pursue new careers. It would seem to me that the fact that they are accredited should mean something. And the sort of suggestion that I get is that the expectation is that they would not only take the accreditation, but be obligated to do additional research on the claims made by the college when they go.

So if the college says or a representative says 100 percent of our students find jobs after taking this course in the field in which they study, it is accredited by the Federal Government, you know, has the Federal Guaranteed Loan Program, and they are accredited by a national or regional organization, why should that student be obligated to do further research? Why shouldn't they essentially take that as a proxy, the accreditation that is required by the Federal Government?

Secretary DEVOS. Why shouldn't they take the—

Mr. MORELLE. Yeah.

Secretary DEVOS. I am not sure I am clear on your question.

Mr. MORELLE. So the suggestion is, as I understand it, the suggestion is that there is a responsibility on the prospective student to do more research on the credibility of claims being made by people representing various colleges. I would just assume if they had been accredited either regionally or nationally and there is a Guaranteed Loan Program, that is an indication that the Federal Government has essentially put the Good Housekeeping seal of approval. Why would the Department, as it seems to suggest in the regulations, require a student to do additional research on the validity of the claims being made by an accredited college?

Secretary DEVOS. Well, I think it is imperative that we provide as much information for all parties. And clearly accreditors have a role, institutions themselves have a role, and the Federal Government, as a lender, has a role to play. That is why we have continued to improve the information available and to insist on an approach with the regulation that is balanced and that treats all institutions equally.

Mr. MORELLE. Well—and I apologize, I am out of my time, so I am going to yield back. But I would just say that accreditation should seem to me to shift the balance and the requirement for the student so that they should be able to rely on that. And I don't think that is what the rule says.

Chairman SCOTT. Thank you. Dr. Murphy from North Carolina.

Mr. MURPHY. Thank you, Mr. Chairman. Thank you, Secretary DeVos for coming today.

I just want to say, I appreciate the effort that your Department is doing to try to be good stewards of the taxpayer money. And I think this entire issue highlights some of the problems that the Federal Government actually has in education. That is a different diatribe I will go on a little bit later. But I appreciate you trying to be a good steward because we are striking a balance between individuals that want to better themselves, to pursue higher education, and also to be one that just doesn't dole out money just because someone claims that they deserve money. I can understand some of the comments or I would probably shake my head at some of the comments and the reasons that some people claim that they should be reimbursed or whatever.

Let me ask you a couple of questions, because accreditation to me, just in the medical sphere, seems to be in my opinion, a way to get a lot of money for institutions that accredit other institutions. And so by definition, in my opinion, accreditation really means about as much as it is worth. You can be accredited by different bodies. And so I don't give a stamp necessarily to some institution that has been accredited. And there is a phrase, caveat emptor, you know, let the buyer beware. So we do take risks whenever we venture into something.

But on the other hand, what strategies, what practices does the Department use to conduct oversight for these higher education institutions to make sure they are not fraudulent institutions?

Secretary DEVOS. Well, the Department has a lot of responsibility to ensure that all institutions are treated equally and fairly. And this rule—and I want to get us back to the reason that we are

here today, to talk about Borrower Defense and our approach to handling these claims and ensuring that students are treated fairly and taxpayers are treated fairly in the process. We are committed to following all of the rules and the regulations that Congress has—the laws that Congress has provided for us and continue to do so regularly.

Mr. MURPHY. Thank you. What form of penalization, if you were, is used by the Department for institutions that are having practices that are causing students to have to lose money to—in other words, what type of deceptive practices are penalized and how are they penalized by the Department by some of these institutions?

Secretary DEVOS. Well, the Department has primarily fiduciary tools and responsibility. It is a balance between accreditors and states and the Department to ensure that institutions are holding up their end of the bargain. And the fiduciary role is primarily through the Department of Education.

Mr. MURPHY. Okay. Just one final question. Of the students who have submitted claims, what percentage would you say are folks that are doing this as a second—while they are also working at a second job or working a job and doing versus people who are primarily just using this as their main focus as far as higher education versus doing it as a second—trying to get a second career?

Secretary DEVOS. Yeah, that is a good question. I am afraid I don't have the granular data on that. I don't know, General Brown, if you have a breakdown on?

General BROWN. No, ma'am. So, sir, we don't collect the data at that level to see if they are doing additional jobs or those kinds of things. We simply adjudicate each case based on its own merit, what is presented.

Mr. MURPHY. And just to follow up with that, I just—you know, I feel for individuals who are working and then trying to better themselves, by all means. You know, education is the key to a life-long career and prosperity.

I do think the Federal Government has led to some of the problems that we are having in higher education now because the money is so free. It comes without many strings, and if you want to get money and go on, you do. And instead, I think it has led to a lot of bloat within higher education and we have a lot of kids going to higher institutions that really should be going to community colleges first.

And so to be honest with you, we are part to blame for all this nonsense.

So, anyway, I thank you for your work and I thank you for trying to keep us informed and doing the right thing.

Secretary DEVOS. Thanks, Congressman.

Mr. MURPHY. I yield back my time.

Chairman SCOTT. Thank you. The gentlelady from Pennsylvania, Ms. Wild.

Ms. WILD. Thank you, Mr. Chairman.

I would like to first address the new partial relief formula released by the Department. An expert in the field, Dr. Douglas Webber, who is an associate professor of economics at Temple University and was a bipartisan witness before this committee, recently said that the new Borrower Defense scheme is nonsensical

and harmful to students. In particular, he pointed out that the standard deviation, the main tool used by the Education Department, is defined based on the mean and has no direct relationship to the median.

In short, his analysis finds that the Education Department has proposed a formula which misunderstands and misapplies fairly basic statistical techniques in a way that makes it materially harder for defrauded students to find relief.

I would like to enter his analysis into the record.

Chairman SCOTT. Without objection.

Ms. WILD. Thank you.

Moving on, Secretary DeVos, over the past year the number of pending Borrower Defense claims has ballooned to 227,000. Many of these are part of group claims submitted by 20 separate state attorneys general, including the one in my state, Pennsylvania. And some borrowers have been waiting for more than 4 years for relief. These group claims represent thousands of students who were defrauded by predatory colleges. There is no question that these colleges engaged in fraud. Twenty-four members of this committee, on both sides of the aisle represent students in those states.

Now, initially, when those claims were brought, your Department attempted to have them summarily dismissed by arguing that state attorney general could not assert a Borrower Defense on behalf of a group of borrowers. Is that still your assertion?

Secretary DEVOS. Congresswoman, thanks for that question. Let me just correct you. We have now—

Ms. WILD. Well, let me just have an answer first. Is that still—

Secretary DEVOS. Let me just correct you, we now have almost 300,000 claims filed.

Ms. WILD. Okay. All right. Thank you.

Secretary DEVOS. And—

Ms. WILD. Is it still your assertion that a state attorney general cannot assert a Borrower Defense on behalf of a group of borrowers?

Secretary DEVOS. It is the assertion that it is the Federal Department of Education that has through Federal Student Aid the oversight responsibility and the claims continue to be filed by individuals and are considered as individuals.

Ms. WILD. So I take it then that your answer to my question is yes, that you still maintain that a state attorney general cannot assert a Borrower Defense on behalf of a group of borrowers.

Secretary DEVOS. I know that there are many—

Ms. WILD. Yes or no.

Secretary DEVOS. I know there are many attorneys general who are marketing the opportunity to file claims. We have seen Facebook ads and many other sources of—

Ms. WILD. Madam Secretary, I am sorry, but you seem to be incapable of answering yes or no, so let me just remind you that in October of 2018 a Federal Court ruled in *Williams v. DeVos* that the Department's actions were unlawful and ruled that the Education Department must review applications submitted by states attorney general and cease involuntary collection activities against those borrowers.

So why are those claims still sitting at the Department?

Secretary DEVOS. The claims cannot be processed without a methodology to do so. We now have one and they are being processed again.

Ms. WILD. And how many of those claims have been processed that were brought by the—the collective claims that were brought by the state attorney general since that court ruling?

Secretary DEVOS. General Brown will have to answer about the specific claims that have currently been—

Ms. WILD. Why don't you—I am going to ask you to get that information—

Secretary DEVOS. That have currently been processed because we just started processing within the last week. So, General Brown, if you would like to—

Ms. WILD. Well, no, I don't—the question is directed to you. If you would like to turn to General Brown and ask him—

Secretary DEVOS. I have just done that.

Ms. WILD.—for that information, that is fine, but I want the answer to come from you please.

General BROWN. So, Madam Congressman—

Ms. WILD. General Brown, would you inform the Secretary please of your answer? How many of those claims?

Secretary DEVOS. We don't process by attorneys' general claims. We are processing—

Ms. WILD. Notwithstanding the fact that the Federal Court directed you to do so?

Secretary DEVOS. We are processing the pending claims that we have had and we will take them as the Federal Student Aid department decides they need to be—the ones that they are able to process and are processing first.

Ms. WILD. All right. I am going to reclaim my time.

In June of 2019, 22 senators wrote to you asking for an update on the status of each of the group discharge applications submitted by the state attorneys general and your Department responded stating that the request for group relief are in various stages of review by the Department, correct?

Secretary DEVOS. They are indeed. All—

Ms. WILD. And what stage of review is that?

Secretary DEVOS. All of the claims are going to be considered individually.

Ms. WILD. On your timetable? Did you not state at the very beginning of your testimony that students are your number one priority? Because listening today, I have a hard time believing that a defrauded borrower would think that you are in their corner.

With that, I yield back.

Secretary DEVOS. I was very clear from the start that while this process—

Ms. WILD. I yield back.

Secretary DEVOS.—was being set into place, that no student would assume more interest on their student loan debt and that they would be held in forbearance. I don't like the fact that they have been sitting there as long as they have anymore than you do. I said that at the beginning, I will say it again now. Our goal is to get these claims processed and to take each student's claim indi-

vidually, acknowledging that each student has unique and separate circumstances. I am committed to doing it—

Ms. WILD. I am sorry, but, Secretary DeVos, you have—

Secretary DEVOS. I am committed to doing that.

Chairman SCOTT. The gentlelady's time has expired.

Ms. WILD. Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. The gentleman from Kansas, Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman, and thank you, Madam Secretary. It is good to see you again. And I noticed also that you tweeted that students are my number one priority. That is why I come to work every day. I know that to be the case as with other educators, one being my mother who is here, was an educator in Kansas for many years and reminded me of what she would say when she came home, and students are her number one priority. And that is why she went to work every day. That is why you go to work every day, and I thank you for that.

Obviously, you are trying to work and do the best you can at an intersection between politics and education where everybody is very emotional about the way ahead. And so thank for your best efforts. You're a patriot and certainly doing the best under the situation.

Now, during your tenure—well, before your tenure, a lot of things happened. So I am going to just ask a bit about the timeline, about let us see—and you can feel free to have General Brown answer if you would like. November 2016, the Department published new Borrowers Defense regulations. Now, that was the first in some 11 years, I believe, in accordance with the Higher Education Act. The final regulations were published in November 2016, were scheduled to go into effect July 1, 2017. But you put a hold on them. Why was that?

Secretary DEVOS. Congressman, thanks for the question.

We were hopeful to be able to delay the implementation of the 2016 rule in order to further refine the rule, which we have now done with the rule that will go into effect next July.

As it stands now, we have three different sort of buckets of claims and rules under which we will ultimately have to operate. The '95 rule, the 2016 rule, and then prospectively the 2020 rule.

Mr. WATKINS. Can you tell us when that process began and how long it took to issue the final rule? And during that time did you consider and incorporate feedback from higher education stakeholders including the public?

Secretary DEVOS. Oh, yes. We went through the rulemaking process and received input and feedback during the public comment period, and responded to that appropriately. Yes.

Mr. WATKINS. Thank you. And again, I just want to say thank you for your hard work, and thank you for all that you do. And I would like it to be a reminder that the challenge here is to ensure that we provide and empower the—in the case of primary education, the decision-making power to teachers and to parents, and assure that we understand what our role—what our limited role as oversight ought to be, because I believe it is best done by the parents and the teachers.

And so thank you again for being here, Madam Secretary. And I yield the remainder of my time to the ranking member.

Secretary DEVOS. Thanks, Congressman.

Mr. WALBERG. I thank the gentleman. Madam Secretary, if you could enlighten us a little further on how FSA communicates in a constant way with loan services and how they communicate the changes in borrower status, when the court intervenes or the borrower files a claim.

Secretary DEVOS. Well, Congressman, the communication with the servicers is an ongoing and regular effort, and continues to be a challenge, frankly. And I would love to have one of the exhibits that we have along here put up, Exhibit 2, to better understand the complexity. You know, when Federal Student Aid was created I don't think Congress ever envisioned the kind of complex organization that it would be today, and I think you will see with this chart, how many different elements there are.

The loan servicers all operate on different platforms, so there is not an efficient and effective way to communicate, it makes communication challenging, but one for which we have continued to take responsibility. That is why we have continued to move to the modernization of Federal Student Aid's platform and framework, what we call NextGen, and we are going to be able to have a much and better and smoother process and communications flow when we are ultimately able to migrate completely to that NextGen framework.

And if you are interested in hearing more about it, I know General Brown has a lot more detail about that process.

Mr. WALBERG. Well, with 8 seconds, 7, I don't think we have that detail, but we will look forward to it. But delighted to hear that while it is cumbersome right now, we are moving NextGen to do it better and complete those 300-and-some thousand.

Thank you. I yield back.

Chairman SCOTT. Thank you. The gentleman yields back. The gentlelady from Washington, Dr. Schrier.

Dr. SCHRIER. Thank you, Mr. Chairman. And thank you, Madam Secretary, for joining us today. I come from Washington State, and nearly 6,500 students there are stuck. They took out student loans and enrolled in bad actor, for-profit colleges that intentionally deceived them. The colleges closed, credits were worthless, they got stuck with thousands of dollars of debt, and nothing to show for it. No degree, no credits that could transfer.

One of my constituents from Pitfall, Washington is a single mother, and she found herself broke because she wasn't able to get a degree, her so-called education prepared her for nothing. She earned very little, was stuck still paying back these loans, even though they gave her no education, and she could not afford to even leave her parents' home.

She said, and quote, "My son has asthma and sometimes needs hospital visits. When he gets really sick, I can't even take him anywhere. It makes my life a living hell." She has had to take out loans because she has continued to have to pay on this debt.

Now there was a consensus in your own Department that all of these Corinthian and ITT loans should be forgiven, that uniformly students got no benefit. And under the Obama Administration a

policy was enacted to forgive that debt because they were victims of fraud.

But you have continued to collect on those loans, and so students sued, and a judge held you in contempt for continuing to take their payments and to this day, the Department of Education is still making students pay off Federal loans for this fraudulent education, sometimes even garnishing wages.

And so my question for you, who considers students their number one priority, is, do you really believe you have done everything you possibly can to help these students and make them whole?

Secretary DEVOS. Well, Congresswoman, let me first disagree with the narrative that you just advanced. I have continued to respect the fact that many students' Borrower Defense applications have been pending, and I have directed that all students whose applications are pending are in forbearance, and are not having interest accrue.

So, the narrative that you have advanced is not accurate, and I am committed to continuing to implement this methodology to now process the pending applications, and I am very hopeful that we are going to be able to continue to do it, without litigation, and that ultimately these borrowers will have their questions answered, and I can—

Dr. SCHRIER. Here is my concern, is that you say they are in forbearance, but people are still paying on these loans. They are still racking up—

Secretary DEVOS. In the case that they were, they have been remediated, and where we have become aware that they have been inaccurately taken out, we have remediated them, and we will continue to be vigilant about that.

Dr. SCHRIER. I would like to know about what kind of timeframe we are looking at. Because you have mentored children, precisely the kinds of kids who grow up, and go to institutions like this. And I wonder if you could just put yourself in their shoes and feel what it would feel like to go to one of these institutions, be defrauded, be deceived, told they were going to have a degree, that credits would transfer, that they would have an income afterwards, and then not.

And then have to wait this long for forgiveness. Being in forbearance is one thing, but you are continuing to collect on these students, and my understanding is that only about 1,500 cases have been truly processed through to date.

So, your new process looking at one case at a time, anticipating another year of waiting that seems like too long to me. Can you tell me when you anticipate that they will have relief?

Secretary DEVOS. I can indeed feel for the students that are going to any institution and having hopes that far exceed what they realize and what they ultimately experience. And we are committed to ensuring that every student that submits a Borrower Defense claim is considered on its individual merits, and that we have a fair and robust way of considering each of those claims.

We are moving as expeditiously as possible—

Dr. SCHRIER. This is my issue that—

Secretary DEVOS.—to address those claims now that we have a new methodology underway.

Dr. SCHRIER. So, the new methodology has multiple flaws, but there is also nothing that prevented you from simply stopping collecting payments while it was going through this process. But the students are still paying and some of them going into debt, some of their credit rating is damaged, and I would just like to know what you are going to do to fix this. To give the money back to them to repair their credit ratings, because there is a long chain of suffering that happens when you are forced to continue to pay on fraudulent debt.

Secretary DEVOS. Again, any student that ultimately has a claim that has merit, and that for which they have experienced financial harm, we are committed to ensuring that they are made whole in that process.

Dr. SCHRIER. Corinthian students and ITT students 100 percent have valid claims because they got zero benefit.

Secretary DEVOS. That is simply not true, there are many Corinthian students and ITT students who have done very well—

Dr. SCHRIER. Your own staff determined it was true. Thank you.

Chairman SCOTT. Your time has expired. The gentleman from North Carolina, Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman. I have been watching some of the hearing over my office, and having some other meetings. You know, I thought all the painful stuff was happening in another committee, but obviously we are making some space on this one, even though we are not the feature primetime spot, it doesn't mean you can't still say some crazy things on this committee as well.

I have got a couple questions, but I am just kind of pausing to commend you on your strength. Listen, the reality is, is all of us when we transition into the political environment, my background as a pastor, some educators, you are not going to get everything right at first, but we are taught to look at the heart.

And I think with your career, before coming to this wonderful position of Secretary of Education, that you have, and other things that you have done, I think the heart is pretty clear here on what you have tried to do.

It is a little embarrassing to see when it goes personal, like it has, but I don't know how you have continued just to kind of—to take it for 3 years and just keep moving forward. But you have, and I think that shows great resolve. I think sometimes when people have disagreements, it is a shame that we make it personal, because I would tell you, I think only God sees the heart, and I just commend you for trying to do the right thing.

And I guess I will ask a few questions, if that is okay at this point. So, after my commentary is completed. You have released a new methodology for determining relief for borrowers. Can you please walk me through the methodology, and explain why you think this is fair and appropriate measure? If General Brown needs to provide some specific information, to have you do that as well? So, I will toss it to you.

Secretary DEVOS. Well, thanks Congressman, and thanks for the encouragement. The top line is the new methodology really treats students individually, and fairly, and also respects the taxpayer. It has established a process of scientifically proven demonstrable

process to consider students that made claims against whatever institution, by the program they attended.

And it compares the earnings, the median earnings from that program at that institution with median earnings from like programs from other institutions, and so—

Mr. WALKER. I am sorry, go ahead, finish.

Secretary DEVOS. If it falls outside of two standard deviations from that mean, or median, the borrower would receive 100 percent relief.

Mr. WALKER. Right.

Secretary DEVOS. And between the median and two standard deviations, it would be a tiered approach, and so we believe this is a very fair and good way of demonstrating that.

Mr. WALKER. So which of these loans does this methodology apply to?

Secretary DEVOS. Well, all of the pending claims with the exception of the Corinthian college students that have been carved out by the previous lawsuit, and we are hopeful that the judge will review this process and permit it for the claims that were pending there as well.

Mr. WALKER. My understanding is that the system used to process these claims and match borrower information, is significantly out of date and lacks the capacity to efficiently process the exponential growth in claims since 2015. At least that is our understanding.

Could you or General Brown, if this requires a more technical answer, please elaborate as to why this backend system is deficient in handling these claims, and how this can be contributed to the backlog of claims processed.

Secretary DEVOS. Well, first of all, Federal Student Aid as an organization in general is a very complex organization.

Mr. WALKER. Yes, it is.

Secretary DEVOS. Congress never envisioned, I don't think, when it was founded, what it would become today. And we are in the process of updating that foundation and framework so that it does more smoothly and easily talk within itself, and with its servicers.

But I think the ponderousness around this whole thing all speaks to the complexity of Federal Student Aid, and the federalization of student lending. And it has continued to manifest itself, 1995 to 2015, only 59 Borrower Defense claims in that 20-year period, since then, nearly 300,000.

Mr. WALKER. Wow.

Secretary DEVOS. And it was frankly an all-out attack in the last administration on specific institutions, and I think that is very unfortunate. Our rule, going forward, will treat all institutions equally. You know, the last administration said they weren't going to look at materials or realities from you know, liberal arts programs because the value was assumed there. Well, that is just not a reasonable approach going forward.

Mr. WALKER. Sure. And I wanted to hear more from General Brown, but my time has expired, so I yield back to the chairman.

Chairman SCOTT. The gentlelady from Illinois, Ms. Underwood?

Ms. UNDERWOOD. Thank you, Mr. Chairman, Secretary DeVos. Do you know how many Corinthian students had negative information wrongly added to their credit reports?

Secretary DEVOS. How many students with the mistake that was made most recently?

Ms. UNDERWOOD. How many students had negative information wrongly added to their credit report?

Secretary DEVOS. Hmm?

Ms. UNDERWOOD. I am not asking about your staff, ma'am, I am asking about you. Do you know the exact number? Ma'am? Secretary DeVos, do you know the exact number?

Secretary DEVOS. Congresswoman, I am consulting with the chief operating officer of Federal Student Aid, who is charged with the running and implementation of this program.

Ms. UNDERWOOD. Right. I appreciate that, but if you didn't know, the answer could be just be no, and that is okay.

Secretary DEVOS. I am trying to find out if I can give you an accurate answer.

Ms. UNDERWOOD. Okay.

Secretary DEVOS. The reality is, we don't distinguish within the loans that have been pending in process. So, the answer is we don't - that information is not collected.

Ms. UNDERWOOD. Okay. Well, so far your Department has publicly released the number, and it is 5,900 Corinthian students whose credit reports were wrongly affected. Now, you are aware that negative information on your credit report, like information that says you are not paying your student loans, can lower your credit score. Is that correct?

Secretary DEVOS. All of the students who were impacted by the mistake that was made have been remediated.

Ms. UNDERWOOD. We are going to get to the remediation. I was just asking—

Secretary DEVOS. Well, I am going to get to the remediation now because it has been done.

Ms. UNDERWOOD. Ma'am, it is my time. Reclaiming my time—

Secretary DEVOS. So let us go on to the next question please—

Ms. UNDERWOOD. Mr. Chairman, reclaiming my time.

Chairman SCOTT. Go ahead.

Ms. UNDERWOOD. Secretary DeVos, have you ever been denied a home or a car loan because your credit score was too low?

Secretary DEVOS. I do not.

Ms. UNDERWOOD. Okay. But you do know how an unfairly low credit score or a bad credit report can affect students. What are some specific examples of those harms?

Secretary DEVOS. In fact, all of the students that had credit reports affected have been remediated and—

Ms. UNDERWOOD. Thank you so much, ma'am.

Secretary DEVOS.—we will continue to pay attention to not having it happen again.

Ms. UNDERWOOD. So, do you know what, ma'am? Thank you. So, we know that students whose credit reports get harmed it impacts their ability to buy a home and auto loans, it can lead to job loss, the consequences are real and they are personal, and they have really devastating impacts on students.

So, I want to share a few of their stories. Loquisha Johnson from my home state of Illinois earned a degree as a medical administrative assistant from a Corinthian school, but we now know that degree is almost worthless. But Ms. Johnson is left with those student loans. She just had a job offer rescinded because her credit score shows delinquent loans.

Julie Decker from Indiana lost her home and her car while waiting for the debt relief that she is legally entitled to. Now, her credit has suffered so much that she can't find a new apartment to rent.

So, let us go back to that 5,900 number. You previously said that only 900 students' credit scores were affected, but last week you disclosed an additional 5,000 students. Are there more disclosures to come? Or can you commit right now that you have discovered and corrected every unfair report on the Corinthian students' credit?

Secretary DEVOS. Congresswoman, I, too, feel for the individuals that you have cited in your examples and, again, once again, I am committed to ensuring that we do what is right for all students who have submitted Borrower Defense claims. We have continued to be diligent, correcting the errors that were made, we have acknowledged them, we have said we are sorry for them, and we are going to continue to be vigilant to make sure that we do not incur more of them.

We have put notices in the servicers' files, which has significant implications for future federal contracts.

Ms. UNDERWOOD. Sure.

Secretary DEVOS. We have continued to make sure that consequences for the mistakes that were made are levied and that students are continuing—that we continue to put students first in this case. The ones that did have credit ratings impacted, again, we have addressed those. We will continue. If there are instances in the future, we will do so with them as well.

Ms. UNDERWOOD. Right. My concern, ma'am, is that this group of students may just be the tip of the iceberg. Your Department just disclosed this larger number, the additional 5,000 students last week, as a result of one lawsuit, as a result of a court order. It doesn't include the Corinthian students who are not involved in this particular class action, or who joined a different lawsuit, with their State Attorney General, or otherwise.

It doesn't include the hundreds of thousands of students who went to fraudulent schools that aren't Corinthian schools, who may also be eligible for Borrower Defense. And even whereas your own former deputy, Wayne Johnson, gave an interview a few weeks ago about student loans where he said, quote, "Right now, I know that millions of people have unfair information in their credit files that is causing them to pay more on car loans, and on apartments."

So, Secretary DeVos, you both have the responsibility and the existing authorities to do something about it, and what we are trying to determine is, what is the right number? Is it 900? Is it 5,000? Or are we into the millions, ma'am? I yield back.

Chairman SCOTT. The gentlelady's time has expired. The gentleman from Georgia, Mr. Allen—excuse me, excuse me. The gentleman from Pennsylvania, Mr. Keller. I am sorry.

Mr. KELLER. Thank you, Mr. Chairman. Secretary DeVos, General Brown, thank you for being here today, thank you for your service to America's students and education. I appreciate it very much. I have a couple of things that I would like to get into after I just make a couple observations.

Secretary DeVos, I know that we all agree, all students who were defrauded by their schools should receive relief. I also want to focus on fairness.

Since joining the committee we have marked up a one-sided Peter robs Paul Higher Education Reauthorization Act. The Democrat bill struck me as being incredibly unfair to the students we are trying to help, and insulting to the intelligence of the students who made the educational decision in their best interest.

As Democrats continue to push policies that double down on failed policies and cuts out specific educational providers that are only harming our students, we do a disservice to the students when they focus in our school's tax returns, rather than the educational experience delivered.

We can discuss how there are bad actors across the board, but what we should focus on is how we allow students to find the school or educational program that best fits their needs and helps them achieve their goals. And I heard a lot earlier today about not having a process and many things in place for you to be able to do that from the previous administration. So, I just have a couple questions.

Can you tell us about what the Department is doing to help students and prospective students better understand the options available? Like does the College Scorecard cover more than just baccalaureate degrees?

Secretary DEVOS. Congressman, thanks for that question. Yes. As I mentioned a little earlier, the College Scorecard that we have recently enhanced the data for, now contains information at a field of study level for not only 4-year colleges, but also 2-year institutions, for some certificate programs, some graduate programs, and also has links to the apprenticeship programs through the Department of Labor. So, we believe this is going to be a really good and important tool for students to be able to access and use as they consider future fields of study in future programs.

Mr. KELLER. So prior to, the previous administration, did they cover that broad range of programs available or were they just focused on the baccalaureate degrees?

Secretary DEVOS. They were focused on 4-year institutions and by institution level. Now we are down to the program level.

Mr. KELLER. Okay. So what that would do then would be improving any student at any field of study, depending on how long that takes?

Secretary DEVOS. To acknowledge, there are many pathways to a successful adult life, and we encourage students to look at all of their options and, in fact, look at them starting in middle school, frankly.

Mr. KELLER. So your scorecard will actually protect more students than the previous administration's did because you are including at the degree level, and not the institution level, and you are considering all programs, not just baccalaureate?

Secretary DeVOS. Correct.

Mr. KELLER. So you have done more to help students since you have been Secretary than previously?

Secretary DeVOS. I would argue with that to be, yes.

Mr. KELLER. Yes? Because previously if I had been going for a 2-year agree or an apprenticeship, I wouldn't have had that information available to me. Correct?

Secretary DeVOS. That is correct.

Mr. KELLER. Thank you for that. I appreciate it very much. Also, Secretary, has the information shared on the College Scorecard been expanded? Of course, that is—expanded of course, that it has been expanded under your watch. Can you highlight what changes have been made, what the additional educational pathways are available?

And I know you talked a little bit about that, but, you know, when you look at that, how do you think that its helped some of the other people that aren't going for a baccalaureate, but they may be going for 2-year associates degree or a training program?

Secretary DeVOS. Well, this is relatively new, so it was just within the last several weeks that this data was made available, and so I think prospectively students are going to be able to make better comparisons, and to be able to compare between institutions, compare between programs, compare different kinds of fields of study, and again, just give students and prospective students many more tools to be able to make good decisions for their future.

Mr. KELLER. I appreciate that. And I just want to follow up. I know there has been some previous remarks made about certain, you know, students, they haven't, but the courts have really held you up on getting relief to all students. Is that correct?

Secretary DeVOS. Correct. We had a process well underway in 2018, and the court stopped us from continuing it in May of 2018, and we have been waiting for the court on appeal; since then, have developed a second methodology, and have just been able to unveil that and begin implementing it last week.

Mr. KELLER. So, really, the courts have caused some people's credit scores to be harmed more so than the Department?

Secretary DeVOS. Indeed. Indeed.

Mr. KELLER. Thank you, Madam Secretary.

Chairman SCOTT. The gentleman's time has expired. The gentlelady from Connecticut, Ms. Hayes?

Mrs. HAYES. Thank you, Mr. Chair. I would like to return just for a moment to that January 10, 2017, memo from the Borrower Defense Unit to Under Secretary Ted Mitchell, who is the top lieutenant of former Secretary of Education John King. I just want to point out, while this memo was written before you took office, it serves as a fundamental transition memo between administrations.

And I have the benefit of sitting next to a former Secretary who assured me that there are meetings and a briefing book and letters, so I just think that it would be vital for you and your Department to read what you inherited, especially since you were saying there was no plan, and, in fact, there was a plan as this memo indicated. You know, we operate in a country where there are—

Secretary DeVOS. It was not a process, and I will continue to—

Mrs. HAYES. That wasn't a question. We operate in a country where we have peaceful transitions of power, and it is understood that we have changed from administration to administration. And then just the last thing I would say before I move on to my questions, is that it has been suggested by my colleagues on more than one occasion that I don't understand, this I understand, everything about these hearings I understand.

So, Secretary DeVos, in March, you told Senator Murray that, and I quote, "The Department had decided to move forward with processing—the Department had decided to move forward with processing denials while awaiting the court's decision regarding the Borrowers Defense partial relief methodology. It turns out, in fact, that your Department has been sitting on approximately 18,000 denial claims."

My question is, why would the Department purposely not inform borrowers that their claims had been denied?

Secretary DEVOS. First of all, the claims are ineligible, and we decided not to release a whole bunch of them early before we were able to implement this new methodology, because we didn't want to concern students that had pending applications that perhaps this was going to be the case for everyone.

So while we could reach the conclusion and reach the decision for a number of them, we intentionally, did not want to, I think, concern students with pending applications because there are, because there are many pending applications that they have relief.

Mrs. HAYES. I got it. I got it. But don't you think that a borrower who has no chance of getting forgiveness, should be told their status? Is it unfair for borrowers to be waiting up to 4 years for a resolution when some of them may have, in fact, already been denied? The institutions have closed, they are losing access to critical documents, the interest is building up. Is there any, I don't know, political reason for doing that so as the number of denials would not be increased? If you have the information.

Secretary DEVOS. Yeah, we were concerned about the message that it would send to pending students with valid applications, and so that was the reason.

Mrs. HAYES. But wouldn't a student want to know if they are waiting for a decision. It has been 4 years, and a decision has already been made that their application was denied so that—

Secretary DEVOS. I am sure all students want to know, that is why we are really focused on trying to get this new methodology fully implemented, and, frankly, have been very disappointed that the court has not opined on our appeal to the previous methodology.

Mrs. HAYES. But the court has not prevented you from informing students of denials. Is it not true that in a sworn declaration filed last month in court that Principal Deputy Under Secretary Diane Auer Jones stated that the Department did not want to notify borrowers about the denials because of concerns about the public perception of the process?

Secretary DEVOS. Again, just what I said, we did not want students with pending applications to somehow think that their application was not going to have any chance of approval or of relief.

And so, now that we have the new methodology, it is kind of a moot point actually. We are well underway with processing again, and we will be able to inform borrowers, hopefully, many of them very quickly with regard to the status of their application.

Mrs. HAYES. To me this looks like a political decision because you aren't approving any claims. It would look bad if you were ratcheting up the denial rates, if the approvals were flat, and the denials were up. So, instead you are just sitting on everything to keep better optics at the cost of students, who just want a resolution.

I will ask again, if you know a borrower does not have a valid claim, or that he has been denied for other reasons, what is the benefit of sitting on that information and not sharing it with the student?

Secretary DEVOS. I would like to refer us to Exhibit 6, which demonstrates the percentage of claims that had relief on—

Mrs. HAYES. I am talking about the claims that you know are denied.

Secretary DEVOS. I am just—I am talking about the history of the claims that we were able to process before the courts stopped us. And compare that to the percentage of claims that the previous administration, and they were consistent, you will see 62 percent—

Mrs. HAYES. My time has expired. I have to yield back.

Secretary DEVOS.—62 percent, and so we have continued to—

Mrs. HAYES. My time has expired. I have to yield back. I am sorry.

Chairman SCOTT. The time has expired. The gentleman from Georgia, Mr. Allen?

Mr. ALLEN. Good morning, Madam Secretary. And I thank you, too, for I know that you and I share a common faith in I think just probably what has sustained us in these things, persecution is just a part of it, and there is a lot of disagreement about how to do things here. But I do remember, and, of course, we are in a different Congress, but—and a lot of different, new faces here, and a lot of new ideas. But in the last Congress we actually marked up the Higher Education Authorization.

And one of the most criticized pieces of that by my Democratic colleagues was a piece we put in there holding both public and private schools of higher education accountable to both students and the Federal Government for the federal debt. In fact, later if we go back and pull the records, but I would like to enter the record of exactly that language that went there, the vote on it, and the comments about that, making schools of higher education more accountable, because obviously young people had been misled.

I come across young people all the time and, you know, their first request is could you please forgive my student loan debt? Because they were ill-advised, and frankly, this thing kind of ramped up in the last, you know—well, I have been a member, this is my third term, but I think I began hearing about this about 10 years ago. Because the idea then is every young person should get a college degree so the idea is, okay, we are going to loan people the money and not tell them how in the world they are going to pay it back. And that is wrong.

And the Federal Government should have—I mean, I put the blame right here on this body. I mean, whoever came up with this idea in the beginning, and did not put into place and provide for and to keep young people from being misled, that is the tragedy here.

And I realize you inherited a lot of this, and so what I am going to do right now—and, General Brown, you have got some charts over there, if you haven't been able to share exactly what you are trying to do to correct this situation, I welcome that opportunity.

For you to have that opportunity, we have got 2 minutes and 22 seconds remaining. If there is something over there that you think would help my colleagues here understand what you are trying to do and how quickly you are trying to do it, I would be glad for you to share with us.

Chairman SCOTT. If the gentleman would direct the question.

Mr. ALLEN. All right, well, Secretary DeVos, if you would, whatever you have to do, to defer to General Brown or whatever, however you want to do that, please proceed.

Secretary DEVOS. Well, Congressman, thanks for that. And you are right, we inherited a difficult situation. We are trying to put in place a process, and we have now a second time put in place a reasonable process, one that treats students fairly, taxpayers fairly, institutions fairly, one that is balanced in its approach.

And I will just stop and see if there is something that General Brown feels we have not been able to share with regard to that new process.

General BROWN. Yes, ma'am. Just very quickly, I will show you on Exhibit 2. And while he is getting that up, just to correct one error here, 100 percent of those people who were impacted with credit report ratings have been corrected, and almost all with very few exceptions, and those we work today have had refunds given to them. We have a system of 11 loan—

Mr. ALLEN. I have to add one thing, that was a mistake with my credit report that I didn't know about when I went to buy something and so it happens. Okay. So, go ahead.

General BROWN. Yes, sir. I will just quickly tell the committee that we have 11 loan services and 13 collection agencies across the country, and those are not systems that work together. Those are individual silos of at least four different systems, so to get information from these systems, you actually have to go out to the individual loan servicers and craft the questions exactly right to get it back, which is not the way any of you do your consumer banking, it is not the way that most people do business in this century.

So, what we are trying to do is to take ownership of loan servicing back into Federal Student Aid, so that there is one system that we own, so that if you ask us a specific question we can get it from our systems without going out to the loan servicers and, therefore, reduce the errors.

We call that the next generation of Federal Student Aid, and we are almost there. Some of it we are implementing now, and most of it we have implemented next year.

Mr. ALLEN. All right. Secretary, hang in there. I am with you. Thank you.

Chairman SCOTT. The gentleman's time has expired. The gentlelady from Florida, Ms. Shalala.

Ms. SHALALA. Thank you very much. Thank you, Secretary, for joining us today. Secretary DeVos, you have repeatedly said that your new partial formula is necessary for individualized review of claims from defrauded borrowers. Is that correct?

Secretary DEVOS. Yes.

Ms. SHALALA. Isn't it true—

Secretary DEVOS. But not only for individual, but just for a framework and a process.

Ms. SHALALA. All right. Isn't it true that your new partial relief formula does not allow for individualized review of claims?

Secretary DEVOS. No, it does allow for individualized review of claims.

Ms. SHALALA. You are sure of that?

Secretary DEVOS. Yeah, each is being reviewed individually, by General Brown's robust—

Ms. SHALALA. So the partial review relief formula does allow for individualized review of claims?

Secretary DEVOS. Yes. Yeah, I mean, each of them are being reviewed individually, that is why there are three times the number of attorneys that we have had previously.

Chairman SCOTT. The gentlelady yields. Ms. Shalala?

Ms. SHALALA. Yes.

Chairman SCOTT. Are you asking whether or not the individual case is reviewed, or whether or not the individual dynamics, whether that person's income is individually reviewed?

Ms. SHALALA. The latter.

Secretary DEVOS. Oh, well, no. It is a program-to-program review, so if a borrower has submitted a claim with regard to the specific institution, and the program that they studied, the information, the median earnings information from that program, from all of those who graduated from that program at that institution is reviewed against the median earnings of like programs from other institutions around the country.

Ms. SHALALA. That is not an individualized review, you have set up a formula there.

Secretary DEVOS. It is individualized to program, because as someone said earlier, you could have an individual who has done remarkably well financially that has made a claim against a program that, upon review, falls short simply because that individual has earned more they should not be penalized in that case.

Ms. SHALALA. Okay. Let me ask a quick question to follow up with colleague, and I have another question. At what date are you going to notify the 18,000 people that have claims have been denied?

Secretary DEVOS. I believe that has been rolling out, and continues to roll out, and General Brown would have the specifics.

General BROWN. It is happening, ma'am, even as we speak.

Ms. SHALALA. And when will all of them be notified by?

General BROWN. That first tranche, I suspect they will be notified over the next couple of weeks, some of which have been notified.

Ms. SHALALA. Okay. Right, but when will the 18,000 be fully notified?

Secretary DEVOS. As part of that.

General BROWN. Over the next couple of weeks, ma'am, they will be. And it has already started.

Ms. SHALALA. All right. Let me ask a question. How many staff people does the General have for these individualized reviews?

Secretary DEVOS. I am going to ask him to comment how he has staffed up at my urging the area reviewing them.

General BROWN. So, ma'am, we will have up to 64, and we have most of those already hired now, that's more than three times as many as we have ever had, the peak of which, if you go back over the last 3 years or 4 years, has been 14, we will have up to 64.

Ms. SHALALA. So, Madam Secretary, let me ask you a very specific question about this. So, if he has around 60, and you have 227,000 claims that have to be individually reviewed, and you have already indicated that you intend to do that over 12 months, that is about 300 per person. Even the VA and Social Security with the equivalent of a brigade can't review that many.

So, explain to me how in 12 months, you're going to be able with that limited number of people to process, individually, 200—over 200,000 claims.

Secretary DEVOS. Well, General Brown has assured me that he has the personnel in place to be able to do that, and he has followed through on all of his commitments to do PSA and—

Ms. SHALALA. Madam Secretary, that is about 300 a day for an individual. That is technically impossible. The VA cannot do it. Social Security cannot do it. We have a lot of experience in government. So, I am questioning the credibility of being able to do that in 12 months, which you have assured us you are going to be able to do.

Secretary DEVOS. I am going to ask—again, I am going to ask General Brown to comment more specifically on that.

General BROWN. So, ma'am, I would say that all claims are not the same. The complexity of some are far more than the others. The amount of—so our documentation is far greater than the others. So, we have people that have been working at this. They have looked at the various complexities. The number that we are at, today, for processing, we are very early in the process. We hope to grow that to a number that exceeds the amount that are coming in, and we are not stagnated. So, if 64 is the wrong number, then we will hire more. We will go back to the Secretary to ask for more resources, and we will look at the production on a weekly basis.

So, I would not get fixated on 64 other than to say that is greater than the amount that we have had in the past. We are looking at this each month, and if we need to bring on more attorneys, we will.

Ms. SHALALA. Yes. With all due respect, Madam Secretary, I am focused on 200,000, not on the number of staff people. I am simply suggesting that the—that, technically, given the number of staff people, you actually cannot process that number and you ought to look at that. If I have one more second—

Secretary DEVOS. Congresswoman, if I could just—

Ms. SHALALA. Yeah.

Secretary DEVOS.—comment. There are—many of these claims have been adjudicated to the point of being able to be processed. So, there are a lot that are already several steps into the process. Now, they have to just complete the process.

Ms. SHALALA. I yield back.

Chairman SCOTT. Thank you. Thank you. Who do you have next? Comer?

Mrs. FOXX. Mr. Smucker.

Chairman SCOTT. Oh, oh, I am sorry. Mr. Smucker? Gentleman from Pennsylvania, Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here. I appreciate your work, appreciate your comments earlier in regards to the need for congressional oversight, which you stated you understand the need for. You have done, I think, an excellent job of outlining your response and the Department's response to the questions that have been raised, legitimately, here today, but I find it unfortunate that, you know, you continue to be asked about reading a specific memo, and that, you know, I do not understand what that has to do with your Department policy on these issues, which is important that we understand. And, in fact, the memo, that you are being asked about was written in January 10, 2017, prior to you taking office. So, I just want to make that clear for the record.

I also find it offensive, earlier comments that were made, in regards to your view of public education. Anyone who looks at your body of work and says that you do not care about children, does not care about public education, that is untrue. It is false and it is offensive. I also find it offensive that the same statement was made about Republicans, and anyone can look at my record and others on the Republican side of the aisle and know that we have worked hard to ensure that every child gets the education that they deserve, and that public education is working effectively in our states. So, the committee has reached a new level when we were throwing those kind of accusations against the other side, and it is unfortunate, and should not be part of a hearing here today. You do have—there have been some questions in regards to your authority and to the idea of partial—what is the word?

Secretary DEVOS. Partial relief.

Mr. SMUCKER. Partial relief, I am sorry, and I want to make this clear, and I want to ask you a question in this regard. Partial relief could be for someone who has already graduated from the institution and who is in the workforce, correct?

Secretary DEVOS. Correct.

Mr. SMUCKER. We are talking about someone who may have graduated years before the school closed, who has had a beneficial education, and has had a job as a result of that education. What I am hearing Democrats say here today is they do not even want us to look into that. They want, instead, you to make a blanket relief, 100 percent, of any additional student loans that student has outstanding. Am I correct on that?

Secretary DEVOS. Well, there is—I know there is a—an attitude that many, if not all, of these loans should be completely forgiven.

Mr. SMUCKER. Okay, no court of law would look at a situation like this. No insurance company would look at a situation like this.

And for us to expect that taxpayers would support something along that line, I think, is not a good precedent. I do want to put a few things on the record, and I am going to run down through a series of questions.

So, Borrower Defense, first, it—you agree, it is a provision included in the Higher Education Act, correct?

Secretary DEVOS. Correct.

Mr. SMUCKER. That statute in Section 455H of the law states, “Notwithstanding any other provision of state or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan, made under this part, except that in no event may a borrower recover from the Secretary in any action arising from or relating to a loan paid under this part an amount in excess of the amount such borrower has repaid.”

Those are the only provisions that restrict the activities that you can take in writing a rule. Am I right on that?

Secretary DEVOS. Correct.

Mr. SMUCKER. My interpretation means this: one, that the Secretary will issue regulations on this issue; and, number two, as I said, that is the only limit that you have in providing relief.

Turning to the rulemaking activity then. There are three different regulations: President Clinton’s in 1995, President Obama’s in 2016, and yours this year. Is that correct, as well?

Secretary DEVOS. That will take effect next July, yes.

Mr. SMUCKER. Yes, and the regulation applicable to the loan is dependent on the date the loan was disbursed?

Secretary DEVOS. Correct.

Mr. SMUCKER. Under the 1995 Clinton regulations, did the regulations allow the Secretary to grant partial relief?

Secretary DEVOS. Yes.

Mr. SMUCKER. Under the 2016 Obama regulations, was the Secretary allowed to grant partial relief?

Secretary DEVOS. Yes.

Mr. SMUCKER. Under the 2019 regulations—

Secretary DEVOS. Yes.

Mr. SMUCKER.—was the Secretary allowed to grant partial relief? Do you believe that authority is clear and not in dispute?

Secretary DEVOS. Yes, I do.

Mr. SMUCKER. If members of Congress disagree with the policy decision, they defer to the Department. Can they introduce and pass a bill mandating that—you to provide full relief, and would you continue to follow the law that Congress has written if that were the case?

Secretary DEVOS. Congress could, indeed, pass that law, and if that law were passed, I would, indeed, follow it.

Mr. SMUCKER. Thank you, Madam Secretary.

Chairman SCOTT. Thank you. The gentleman yields back. The gentleman from Michigan, Mr. Levin?

Mr. LEVIN. Thank you. Good afternoon, Madam Secretary. I am going to lead you, just to let you know, through some yes or no questions, just like Mr. Smucker did so ably. Let us see if we can get a yes or no answer over here, as well.

In a November 7th letter to Chairman Scott, you wrote the following in reference to claims from defrauded Corinthian borrowers, and I quote, "The clear intent of the prior administration was to eventually provide blanket relief, without review of the facts and evidence." Does that accurately represent your reviews on the Obama Administration's process for reviewing Corinthian claims?

Secretary DEVOS. Yes.

Mr. LEVIN. Okay, thank you. So, I have in my hands here two memos that were uncovered yesterday in a story by National Public Radio. These memos, which were produced by Education Department staff in late 2016 and early 2017, show a detailed analysis documenting pervasive and consistent fraud by Corinthian schools.

The committee has been requesting relevant documents from you for the last year. Did you provide these documents to the committee?

Secretary DEVOS. We have been providing documents.

Mr. LEVIN. Did you provide these documents, these two memos?

Secretary DEVOS. I cannot—I do not know what memos you are holding up, and I—

Mr. LEVIN. They are the memos that were—we have been talking about all morning, ma'am.

Secretary DEVOS. Yes.

Mr. LEVIN. You do not know whether you submitted them or not?

Secretary DEVOS. The NPR memos that—yes.

Mr. LEVIN. Yes. Did you submit them or not to us?

Secretary DEVOS. I am sure that they were part of whatever—

Mr. LEVIN. You are sure you did submit them?

Secretary DEVOS.—document dump of 18,000 pages. I cannot say with certainty.

Chairman SCOTT. Will the gentleman yield?

Mr. LEVIN. Yes, I would.

Chairman SCOTT. We have not seen those documents.

Mr. LEVIN. Okay. So, you did not submit those documents to us. So, did you halt and curtail loan relief for defrauded Corinthian borrowers without reading this detailed review of the fraud conducted by your own career staff, by these schools?

Secretary DEVOS. Congressman, I had many discussions, early on in my term, but can I—

Mr. LEVIN. So, let me just ask you, do you know whether you have read these?

Secretary DEVOS. Can I finish?

Mr. LEVIN. No, no, you can't. Do you know whether you read these or not?

Secretary DEVOS. I had discussions about the previous administration's views and policy toward these pending applications.

Mr. LEVIN. Okay. So, let us move onto the substance of the memos. According to the memo, dated October 24, 2016, the staff at Corinthian-owned schools repeatedly lied to perspective students by telling them that their credits would transfer to other schools. The memo quotes one of the many similar claims from students. The student says, and it is on the screen, here, "I was told my credits would transfer to University of South Florida, for my B.A. in finance, and they did not. So, I was stuck with all these loans and

no school will take them.” Madam Secretary, does that sound like fraud to you, yes or no?

Secretary DEVOS. Sir, we are considering each—

Mr. LEVIN. Okay. So, let me go on. There’s more. That same memo documents another form of fraud in which Corinthian schools repeatedly told students they were accredited, when they, in fact, were not accredited. The memo quotes a claim from one student, typical of many, who says, “There was speculation that the school was not accredited, but they continuously posted fake documents around the school, claiming that they were accredited, and that any credits we received would transfer over without any problem.” Madam Secretary, does that sound like fraud to you?

Secretary DEVOS. Congressman, I—

Mr. LEVIN. Will you go to the ends of the Earth—

Secretary DEVOS. Congressman, I am—

Mr. LEVIN.—to defend a for-profit company that posts fake documents—

Secretary DEVOS. Congressman, I am not—

Mr. LEVIN.—on its walls?

Secretary DEVOS. I am not committed to protecting any institution, no matter what their organization is.

Mr. LEVIN. Okay. Madam Secretary, the—

Secretary DEVOS. I am committed to students and the students that have—

Mr. LEVIN. All right. Let us talk about that, Madam Secretary. Let us talk about your commitment to students, the—

Secretary DEVOS. Can I finish a sentence, please?

Mr. LEVIN. No, you may not.

Secretary DEVOS. I may have—

Mr. LEVIN. The Consumer Financial Protection Bureau found fraud at Corinthian Colleges. The state attorneys general of California, Massachusetts, and Wisconsin found systematic fraud at Corinthian colleges. The career Education Department staff found fraud at Corinthian Colleges. Madam Secretary, you appear to be the only person who does not believe there was fraud at Corinthian Colleges. Can you state to me here whether or not you think Corinthian Colleges committed any significant amount of fraud against its students?

Secretary DEVOS. Congressman, I know that there are student Borrower Defense claims pending for students that attended Corinthian College, and—

Mr. LEVIN. Do you think Corinthian Colleges—we all know there are—

Secretary DEVOS. Mr. Chairman?

Mr. LEVIN. We all know that there are—

Secretary DEVOS. Mr. Chairman, if I cannot answer a question—

Mr. LEVIN. So, did—do you think—I am asking about you, yourself, after all these many months as serving as Secretary of Education that Corinthian Colleges committed fraud against its students?

Chairman SCOTT. The time of the gentleman has expired, and the Secretary will answer.

Secretary DEVOS. I know that there are Corinthian College students that have valid Borrower Defense claims, and we are com-

mitted to ensuring that each one of those is considered individually and that the relief is properly attributed to each student that has filed valid claims.

Mr. LEVIN. Thank you, Mr. Chairman. I yield back.

Chairman SCOTT. Thank you. The gentleman from Texas, Mr. Taylor?

Mr. TAYLOR. Thank you, Mr. Chairman. Madam Secretary, appreciate you taking the time to be here, and, Mr. Chairman, appreciate this hearing. And I will just say that in my own experience, you know, my general experience is when talking to witnesses, letting them know ahead of time that there is a particular memo I want to talk about or a particular issue that might be a little off the beaten path, it is generally really helpful to getting a good response because then they have a chance to review it and read it. And the sooner you get it to them, the better the answers generally are and the more thoughtful they are. And also, I guess, I come from—I was in the Texas Legislature for a period of time, and served on the Education Committee there. And I am used to a more professional environment where people allow the witnesses to answer their questions. I generally find the answers are better if you do not cut them off.

I just wanted to talk a little bit about the operational challenge that lies in front of you, Madam Secretary. So, you—I believe your testimony is that there has been a 5,000 percent increase in the number of Borrower Defense claims. Did I get that number correct?

Secretary DeVOS. Yes, that is correct, Congressman.

Mr. TAYLOR. And then, over what period of time have you seen this 5,000 percent increase?

Secretary DeVOS. Since 2015.

Mr. TAYLOR. Okay.

Secretary DeVOS. It was like a spigot was turned on.

Mr. TAYLOR. Right. Well, and I will just say, you know, I served on the Homeland Security Committee, and we saw a similar crisis on the U.S.-Mexican border, a 3,000 percent increase in the number of families that were coming over the border over a very short period of time. And that, of course, creates an operational problem.

How do you process all of those people? And I think you have a very similar situation here, where a previous administration, for whatever reason, made a series of policy choices that then caused a massive increase, and then you are left, unfortunately, I think, in some sense, to clean up the mess. Can you speak to what you are—how you have ramped up your operation to be able to handle this kind of increase? Because, clearly, you did not have—the ability to handle the situation, as we find it now, did not exist in the previous administration. So, you have had to create it, whole cloth, a whole new process to handle this tremendous burden that has been placed upon you.

Secretary DeVOS. Well, thanks, Congressman. In addition to developing the initial methodology to—considering the claims, Federal Student Aid, itself, I have hired General Brown, who has undertaken a review of the structure internally, has made some significant organizational changes for operational efficiency, and he has also, as you heard previously, stood up on three time—three-fold number of individuals that are committed to this specific area.

And we will continue to adjust, as necessary, based on the claims that we have, with the hope that—I mean, frankly, we should be returning to the kind of level of Borrower Defense claims that were resident prior to 2015. From '95 to 2015, there were a total of 59 claims. That is—I think that is what we should aspire to in the future, that students have the information they need, that institutions are very transparent about what their programs are, and that they are accurate in what they represent. And I think that we will all be in a better place, if that is the case.

Mr. TAYLOR. Sure, and I will just make an observation that, in my own time, in working in the education space in the state of Texas, over and over again articulation between a community college and a public university, which is what, generally, we were working with, articulation, getting credits to go from A to B, is a real problem. And it is not just with for-profit schools. It is with community colleges. It is with dual-credit classes, and it is even within public university to public university. And so, this is something that, certainly, I have seen for many years.

And I was intrigued that those were some of the things that were claimed, you know, a claim of fraud. It is like, well, I have seen that all over the place in the public space for years. Do you want to—is there anything you would like to add at this point? I know you have been cut off many times in this hearing, and it is unfortunate that you are not given a chance to answer your questions.

Secretary DeVOS. Well, Congressman, I would just reiterate the fact that nothing bothers me more than the fact that we have had all of these claims pending for as long as we have had, and I am very hopeful that with the implementation of this new method, we will be able to quickly address and process through. And, you know, I feel for the students involved—and I am, also, very sympathetic, broadly, to students, and we want to make sure that students have good experiences and that they have good information in making decisions about their experiences.

Mr. TAYLOR. Sure. And, again, I just want to say I appreciate that you have basically been handed a mess, and that you have had to create a solution. And it seems like you have created a solution that is going to address that in a timely manner. And I am grateful to you for your service to this great Nation and to the students of this country. Mr. Chairman, I yield back.

Chairman SCOTT. The gentlelady from North Carolina, Ms. Adams?

Ms. ADAMS. Thank you, Mr. Chairman. Thank you for holding this hearing. And thank you, Secretary DeVos, for being here. Earlier this year, you repealed the Gainful Employment regulations, that the Obama—these Obama regulations evaluated programs based on earnings data, just like your partial relief formula.

In repealing these regulations, the Department wrote that Gainful Employment was quote, “fundamentally flawed and an unreliable proxy for program quality.” Gainful Employment was a regulation to prevent low-quality for-profit colleges from obtaining federal funds. You are now using its data to evaluate colleges, exactly what you said it should not be used for. But instead of using it against bad schools, you are using it to deprive students of loan relief.

So, Secretary DeVos, which is it? Should we grade schools on earning data or not? If you can just give me a simple answer, yes or no, I would appreciate it. Should we grade them on earning data or should we not?

Secretary DEVOS. Ultimately, no.

Ms. ADAMS. Okay, thank you.

Secretary DEVOS. All in—unless you are going to do all institutions equally.

Ms. ADAMS. Okay, thank you. So, you are willing to—so, we should not? So, you—

Secretary DEVOS. Unless you are going to do all institutions—

Ms. ADAMS. Okay.

Secretary DEVOS.—equally.

Ms. ADAMS. All right. So, you are willing to use the earnings data to tell defrauded students that fraudulent schools they attend is high quality? Will you commit to using this data to tell students which schools are low quality by reissuing the Gainful Employment regulations?

Secretary DEVOS. No.

Ms. ADAMS. Oh.

Secretary DEVOS. We are moving ahead with a process—

Ms. ADAMS. So—

Secretary DEVOS.—to consider all of the Borrower Defense claims that are pending. And we are very hopeful that, with the additional information, that we have—

Ms. ADAMS. Oh, okay.

Secretary DEVOS.—released for the College Scorecard, that—

Ms. ADAMS. All right, I want to—

Secretary DEVOS.—that could be—

Ms. ADAMS. I need to reclaim my time.

Secretary DEVOS.—a very important and useful tool for students.

Ms. ADAMS. All right. I need to reclaim my time because I really want to get through my questions so it doesn't sound like you are interested in doing that.

Secretary DeVos, Gainful Employment data only seeks to, speaks to the outcomes of those who graduate. I was a college professor for 40 years. I have worked with students, I know the struggles that they have. I even had student loans myself.

But we all know that many students, who attend an institution like Corinthian and I know it has continued to come up, don't graduate. They drop out with a significant amount of debt. So how is it possible that a metric that speaks to the outcomes of graduates only is being used to determine the level of harm for those who dropped out. Just using that one metric? How is that?

Secretary DEVOS. Congresswoman, we believe the methodology that we have just implemented is one that is very scientifically robust and one that is going to ultimately treat the, all of the pending claims fairly and will answer students' questions about whether they have that, had financial harm ultimately or not.

Ms. ADAMS. Okay, let me move on. So in your statement regarding the new partial relief formula, you said and I quote we cannot tolerate fraud in our education nor can we tolerate frivolous giving away taxpayer money to those who have submitted a false claim or aren't eligible for relief end of quote. Yet the new partial relief

formula is not about those false claims of those who were ineligible for relief.

So what possible rationale would you have to deny the full measure of relief to students who we all agree have been defrauded and left worse off?

Secretary DEVOS. Every student claim is going to be considered and if they have received financial harm, demonstrable financial harm, that will be relieved at some level.

Ms. ADAMS. Okay. I am concerned that we are one data breach away from hundreds of thousands of borrower's private data being compromised. So the Department's Borrower Defense Unit is currently in possession of private data from hundreds of thousands of students. So are you taking the appropriate steps to protect the personal data of defrauded borrowers?

Secretary DEVOS. I am very concerned about data security for all students and that is a high priority for me and my department and for Federal Student Aid.

Ms. ADAMS. Well, are you taking any steps?

Secretary DEVOS. We have taken steps ever since I have been in office to ensure the protection of data and that is not a onetime process.

Ms. ADAMS. All right.

Secretary DEVOS. And it's not an episodic one. It is a continuing one.

Ms. ADAMS. Thank you very much and let me just make the assessment. Given the errors that you and your servicers have committed regarding borrower defense data and just borrower data in general, can you commit to reviewing the security of that data and reporting back to this committee to assure that current and future applicants and their data is being managed responsibly. Can you commit to that?

Secretary DEVOS. Yes, I commit to that.

Ms. ADAMS. Great.

Secretary DEVOS. Just as I commit to continuing to be responsible for and responsive about data security across the board.

Ms. ADAMS. Thank you very much. Mr. Chair, I yield back.

Chairman SCOTT. Thank you. The gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Yes, first of all I would like to thank you one more time for over here. Thank you one more time for taking this job. I mean, you knew you were inheriting a mess and you, you know, and just looking at the student loan debt, I think over the past administration it more than doubled from 6 billion to 1.3 trillion and I don't mean to be partisan here, it almost doubled under the Bush Administration as well. So this institution and prior administrations allowed the student debt to get completely out of control. They should have known a mess was here and you are the one who is stuck cleaning up the mess. So thank you for trying.

I know this isn't the only mess you have. I know there has been fraud in the income driven repayment program. I know there is the public loan service—the public service loan forgiveness program has problems. All of which you inherited so again, we all know you didn't need this job and thank you. I am going to ask a couple questions. As I understand it, in the past, they have been adver-

tising that your student loans may be eligible for forgiveness, right? Is that so?

Secretary DEVOS. That's my understanding as well.

Mr. GROTHMAN. And Facebooks ads, that sort of thing and obviously if, you know—if you look on—you can get your loan forgiven, they are going to be all sorts of people lining up to do that.

Of course, some of those claims will be legitimate and some of the claims won't be legitimate. Have you guys uncovered any instances of unfounded claims filed by borrowers?

Secretary DEVOS. Of claims that are not valid?

Mr. GROTHMAN. Right. Anything, I think there are a lot of people out here that just want to forgive everything but.

Secretary DEVOS. Yes. There is, there are many of them.

Mr. GROTHMAN. Okay.

Secretary DEVOS. There are many of them.

Mr. GROTHMAN. Do you want to elaborate on that at all?

Secretary DEVOS. Well, there are different kind of invalid or, you know, claims that cannot be in any way relieved financially. Some of them fall outside the bounds of the various rules and times of submission.

Some of them are clearly not based on anything close to fraudulent. I referenced the one about I didn't, you know, my professor was mean or I didn't like my professor. I'm sorry, that's not a valid claim for your student loan relief.

Mr. GROTHMAN. Okay.

Secretary DEVOS. So it's a wide variety.

Mr. GROTHMAN. But it's certainly indicative of why we just can't forgive all loans.

Secretary DEVOS. Correct.

Mr. GROTHMAN. Yeah. How are you mitigating cases of baseless claims in borrower defense? Are you doing anything to mitigate that?

Secretary DEVOS. Well, I am very hopeful that as we implement the new rule and continue to work through the processing of these claims that the conversation around this is going to be much more around ensuring that those students that actually have a claim of financial harm are the ones that are getting relief and that we will have fewer than 1,200 plus applicants a week accruing in the Federal Student Aid department.

Mr. GROTHMAN. When fraud is committed, do you have the right to go after any of the colleges and universities that committed fraud?

Secretary DEVOS. Well, I think that that's a very important question and, you know, unfortunately the bulk of a large volume of the pending applications are from institutions that have closed and in that case, obviously it's a different situation.

But for those institutions that are found to have claim, valid claims that are in, are still operational, the schools would be the first place to go. The taxpayer shouldn't have to be footing the bill in the case that they, that the institutions still exist.

Mr. GROTHMAN. Do you think it would be better if some, if this institution did something in the future to make sure those loans didn't get so high in the first place? Or I guess I'll put it this way.

If this institution would do more to educate young people that not every student loan is a good student loan?

Secretary DEVOS. There are many things that both Congress and, you know, writ broadly we all can do to ensure that education experiences in the future are entered into with more thought and more wisdom.

Mr. GROTHMAN. Okay. Do you, you have new regulations coming out. Could you, would you like to elaborate at all on how your new regulations protect the students but the taxpayers and the institutions all at once?

Secretary DEVOS. If you're speaking about the—

Mr. GROTHMAN. Correct.

Secretary DEVOS. Our new borrower defense—

Mr. GROTHMAN. The new ones, yes.

Secretary DEVOS.—regulation, it really does protect students, taxpayers, and gives institutions an equal footing. It treats all institutions equally.

It's a much, I think a much better and more balanced approach to this issue and one that will continue to let students file and claim, make valid claims and give schools the opportunity to review and respond to and students respond back.

I mean, there has to be a due process component for institutions and frankly we need to have a more tight definition of what constitutes fraud or misrepresentation which is part of the 2019 rule.

Mr. GROTHMAN. Thanks and I would like to apologize for some of my colleagues, you know, we got a big swamp here who sometimes they are a little bit intemperate but thank you for coming over here today.

Chairman SCOTT. Thank you. The gentlemen from California, Mr. Harder.

Mr. HARDER. Thank you, Mr. Chairman. Secretary DeVos, I want to start by telling you a story about my constituent, Artemisia. Back in 2009, she became a student at Heald College in Modesto just months after it was purchased by Corinthian Colleges.

Artemisia wanted to make a difference in her community. She was pursuing a medical assistant degree. She chose Heald because she saw in the commercials that it had an 85 percent job placement rate. Seemed like a good investment.

But then she graduated and she couldn't find a job. And now she owes a whopping \$40,000 in student loan debt for a degree that hasn't helped her get hired. That may not seem like a lot of money to you, Secretary DeVos, but in the real world, that is devastating.

Turns out Artemisia wasn't alone in not being able to find a job. Corinthian Colleges across the country lied about their job placement rate. They told her it was an 85 percent job placement rate for Heald. Turns out the actual rate was zero. Not 85 percent, zero. That's a big difference.

Artemisia and tens of thousands of students were defrauded by Corinthian. We all know this. We all agree. In 2014, the Department of Education fined them \$30 million for this fraud. Everyone agreed.

But here, five years later, Artemisia still has that \$40,000 in student loan debt. She still hasn't found a job in her field and she hasn't gotten any help whatsoever.

The reason for that is because you have put roadblock after roadblock in front of helping these students. Your job is to fight for them. But instead, your actions suggest you would prefer to be the chief lobbyist for the predatory schools that defrauded them.

After being ordered by a Federal court to stop collecting debts from cheated Corinthian students, you ignored the order and kept stealing money from these students. You were even held in contempt of court because of it. You are not standing up for them, you are working for the schools that defrauded them.

Maybe you have forgotten to refund these students. Maybe Artemisia's \$40,000 in student loan debt just doesn't sound like a lot to you because it is only one tenth of one percent of one of your families' ten yachts.

Artemisia and tens of thousands of others have been waiting years for your help. You have deliberately violated a federal court order. And I am confused why.

So I guess I just have one question for you, Secretary DeVos. Are you deliberately violating this Federal court order because you are too corrupt to uphold the law or because you are too incompetent to do your job?

Chairman SCOTT. The gentleman will address the facts and figures and not question the character of the witness.

Mr. HARDER. Secretary DeVos, why have you been held in contempt of court?

Secretary DEVOS. Well, Congressman, let me begin by saying I took great personal offense to everything you just said. I come to my job every day on behalf of students. I don't need to sit and listen to what you just spewed out of your mouth. I—

Mr. HARDER. I don't understand how you can take—

Secretary DEVOS. I did not defy any court order. I instructed Federal Student Aid to follow the court order. If you had been here earlier, you would have known that mistakes were made on the part of Federal Student Aid employees and on the part of loan servicers that when they were discovered were immediately acknowledged and corrected.

Mr. HARDER. Secretary DeVos—

Secretary DEVOS. They have been—

Mr. HARDER. Reclaiming my time please.

Secretary DEVOS.—remediated. They have been remediated—

Mr. HARDER. I understand that you have been held—that you are taking offense. The reality is there are tens of thousands of students whose financial futures have been ruined by three years of inaction. And you are just making excuses. You are blaming this problem on somebody else.

You have been Secretary of Education for three years. And you are trying to defy the facts of this matter. Yes or no were you held in contempt of court and fined?

Secretary DEVOS. Congressman, I have not been able to address all of the Corinthian College claims because a court stopped us in May of 2018.

Mr. HARDER. That is simply not true.

Secretary DEVOS. That is true.

Mr. HARDER. The court said there was nothing stopping the Department from processing these borrower defense claims.

Secretary DEVOS. There was something stopping. There was a lack of process. The court said we could simply forgive them all but that was not the right answer.

The right answer is to do what is right for students and to do what is right for taxpayers and that is my goal and that is going to continue to be my goal.

Mr. HARDER. Secretary DeVos, what is right for students is helping the tens of thousands of students who have been defrauded. Students like Artemisia.

And blaming this problem on somebody else, taking three years to make absolutely no progress, it is not helping these students. It is only helping the scam colleges that defrauded them. Thank you, Mr. Chairman.

Secretary DEVOS. Where students have been financially harmed they are going to have relief. We have a new methodology which once again if you had been here earlier, you would have known.

We have just implemented it last week. We are beginning to process them again and students will be considered, their claims considered individually and I am looking forward to addressing all of them.

Nothing disturbs me more than all of the pending claims that have been there and that we have not been able to address appropriately.

Chairman SCOTT. The gentleman's time has expired. The gentlelady from Nevada, Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. Thank you for being here. This is quite a mess. I wanted to ask you, this is an important issue in my state in the past 10 years. 30 - for-profit schools have closed. In fact, a year and a week ago today Brightwood College closed in Las Vegas.

And as we saw with Corinthian Colleges, ITT Tech, ECA, schools with shaky financials are often completely reliant on federal student loan dollars.

And when they collapse until their bankruptcy it is us, the taxpayers as well as thousands of students who are left high and dry. So I really want to in my line of questioning, get to how are we going to prevent this from happening?

So I wanted to ask you just a simple yes or no question. Do you believe it is important that the Department have information about the financial conditions of colleges?

Secretary DEVOS. Yes, it is important.

Ms. LEE. Thank you. You know, you spoke many times today about protecting taxpayer dollars and I could not agree with you more. Yet, I am feeling that a lot of the tension in this room today is because there is concern about protecting tax payer dollars from frivolous BD claims or like I would like to focus on, on how do we protect taxpayer dollars from these fraudulent, predatory schools to prevent this from happening before we throw thousands of students into turmoil? And so I want to ask you a second question. Isn't the point of financial responsibility monitoring to predict school closures before they happen so that something can be done proactively to protect the taxpayer dollars from going to those institutions through student loans?

Secretary DEVOS. Well, Congresswoman, let me just say first of all I don't think, I think levying a claim of predatory against any school that is organized—

Ms. LEE. Well, these, I am talking about schools—I want to define what fraud means. Okay. Because it has been used here a lot today. The definition is the wrongful deception intended to result in financial or personal gain. And it is not lost on anyone here, the preponderance of - for-profit schools in the education space and -profit for-profits schools that are now publicly traded companies. So there is a for-profit motive. There has been fraud. And that students have been left on the hook.

And so my question was simply yes or no. Do you believe that the point of the financial responsibility monitoring is to predict?

Secretary DEVOS. To the extent possible I think that's probably desirable, yes.

Ms. LEE. Okay. I agree with you. I think that is the purpose. You want to predict that these schools are shaky operators, that they might be fraudulent because there are so many kids that are going to these schools and not able to come out and have a job and therefore defaulting on their loans because they didn't get the jobs that they were promised.

And so that is the purpose of these triggers and these rules is to predict it so that we are not sending taxpayer dollars to these schools and then they go bankrupt and the kids can't pay them and then the taxpayers pay it. So—

Secretary DEVOS. And the same is—

Ms. LEE.—my question—

Secretary DEVOS.—true for, of institutions that don't, I mean, there is lots of institutions that—

Ms. LEE. I understand.

Secretary DEVOS.—provide—

Ms. LEE. I am not, I understand there are great institutions. I am talking, I am—this is really about ferreting out the bad actors in this space.

And, you know, I think the lesson for all of us is the regulations that we enact here have consequences intended and unintended which have led us to the situation where we have had thousands of -for-profit schools close.

80 percent of the school closures are -for-profit schools. And many of these are bad actors, okay. And so and by the way, it is minority and low income students who are being preyed upon in these cases.

So I really just want to get to one other question and talk about some of the changes that have been made to your borrower defense rule. Specifically around what these triggers are to identify if these schools are eventually going to go under. And under the 2016 rule, publicly traded for-profit schools were required to report any instant—incident or occurrence of an SEC filing or a warning letter against that institution under, and can you clarify this.

Under the recent rule that was issued, isn't it the case that an institution would only be required to report that when the SEC suspends trading of that stock or if the stock is de listed from the exchange?

Secretary DEVOS. There are changes in the reporting requirements for financial measures for an institution in the 2019 rule—

Ms. LEE. Okay. So the—

Secretary DEVOS. But there are a number of different measures that are required and there are triggers that will happen to send up flags if an institution is in jeopardy. I think it is also important to distinguish—

Chairman SCOTT. The gentlelady's time is expired.

Secretary DEVOS.—to acknowledge the fact that—

Chairman SCOTT. Okay. Gentleman from Pennsylvania, Mr. Meuser. I apologize for being a little abrupt there. Expect to call a vote shortly and we have several members that still are trying to ask questions. Gentleman from Pennsylvania.

Mr. MEUSER. Thank you, Mr. Chairman, and thank you for your professionalism and decency as always. Madam Secretary, nice to see you very much again. I want to thank you for your service. Clearly you work very hard and you have made a lot of progress which I want to ask questions about and outline.

And if people had any idea of what your background really was, the level of work and philanthropy and good that you have done, maybe they'd act a little bit more civilly but perhaps not.

You know, we are trying to—these hearings are supposed to be about ideas, not insults. Right. Solutions rather than salvos. Reality rather than revisionist history and questions rather than accusations. Actual problem solving rather than pointing out problems. But I guess that's just a tradition around here lately.

So I would like to ask you when you became secretary three years ago, my understanding is back in 2015 the number of claims and problems escalated tremendously. And there were a number of reasons for it.

One of them was at Vistria where low and behold the former number two in the Obama Education Department, Deputy Secretary Miller who left in 2013 and became a partner and chief operating officer at Vistria who was on track to become chairman of the university's parent company if the sale went through, had a little—and that is just when Vistria had—all its problems began.

Would you say that was a contributing factor to this unbelievable escalation in claims and problems?

Secretary DEVOS. I think it is certainly possible that it was a contributing factor.

Mr. MEUSER. Well, what were the number of claims, what was the number of claims under the borrower defense repayment rule? It's increased exponentially in the last four years. Do you have any numbers on that?

Secretary DEVOS. Well, from 1995 to 2015, there were exactly 59 borrower defense claims made and since then, that number has increased 5,000 percent to now nearly 300,000 claims.

Mr. MEUSER. And when did those increases begin?

Secretary DEVOS. In 2015.

Mr. MEUSER. 2015. So 2015, 2016, that was the Obama Administration. We are going to want to revise history here. You came in January, 2017. Right.

Secretary DEVOS. February but close enough.

Mr. MEUSER. February. Dealing with a mess, a nightmare situation and what did you do to work on this situation? You and General Brown?

Secretary DEVOS. Well, when I—

Mr. MEUSER. He wasn't there yet.

Secretary DEVOS.—took office, there were 64,000 unaddressed claims from the previous administration. It was clear that promises had been made to approximately half of those and we followed through on the promises immediately.

I also asked the Inspector General to do an investigation into what the process was for considering these claims. And that yielded some significant deficiencies in the—in other words there was no process.

So we set forth to be, to put a process in place to be able to consider each claim for its merit and its validity and we implemented that in early 2018 and we were well underway with processing the pending claims and we were stopped by the court in May of 2018 based on the data we were using, not on the approach to the relief methodology.

Since then, we have been waiting for the court. We have appealed it. We have, we don't agree with the court's decision. It's been appealed. We're still waiting.

And in the meantime, we implemented another methodology which we just were able to implement, begin implementing last week and it will we hope be able to address the claims, the pending claims very expeditiously.

Mr. MEUSER. How many deserving claims were relieved, received relief this past year or the year previous under your jurisdiction versus 2015 or 2016?

Secretary DEVOS. Well, the—

Mr. MEUSER. How many more people were helped—

Secretary DEVOS. Yeah.

Mr. MEUSER. How many more people received loan relief under your jurisdiction and General Brown's versus your predecessor?

Secretary DEVOS. So the percentages of claims of students, claims that received relief were the same between the previous administration and the ones that we have been able to process thus far.

There is a chart here that shows that 62 percent were approved during the Obama administration and we have continued at that level of approval.

Mr. MEUSER. Sixty-two percent but with many more claims so more people were helped.

Secretary DEVOS. Correct.

Mr. MEUSER. Thank you. I yield.

Chairman SCOTT. Thank you. The gentleman from Maryland, Mr. Trone.

Mr. TRONE. Thank you, Madam Secretary, for your service. I know public service can be very hard but of course with it, you know, comes an accountability to help these young students who have been defrauded and help them if we can in a timely manner.

Before coming to Congress, I was the CEO of a business with over 7,000 employees. I know how important people are to any or-

ganization. At the end of the day the buck always stopped with me to make sure we had the right staff to serve our customers.

So let us talk about staffing if you don't mind under your leadership. To follow up on what Secretary Shalala was touching on a bit ago, within the first year in office, you actually cut the staff in the Borrowers Defense Unit, in that unit, during the first year by 75 percent from 29 people to 7 people.

While this might make great sense if we saw a decrease in the number of claims, the opposite as you have clearly stated is actually the opposite. We saw a dramatic increase in claims from 54,000 to now as General Brown said over 300,000 are out there.

So when my business had more work I hired more people. So why when you had in the past this dramatic increase in borrowers defense claims, did you decide to cut jobs instead of hiring more people to do that work?

Secretary DeVOS. Congressman, good question. We had significant attrition when I first came into office and since then I have instructed and urged General Brown to staff that segment of the Federal Student Aid office to the extent that we need to be able to address these claims now that we again have a process to be able to unveil and to implement.

Mr. TRONE. And that's great. I guess the question that is still there is that now three years later, you know, we are actually at seven—

Secretary DeVOS. Well, we were—yeah, we were—

Mr. TRONE. We were actually at 7 people at one point. According to the public document of March 31, 2019 you had 7 employees remaining in the Borrowers Defense Unit.

Secretary DeVOS. Well, we were processing the claims under the previous methodology and—

Mr. TRONE. Yes.

Secretary DeVOS.—that was moving along well. When the court stopped us—

Mr. TRONE. I have heard about that and I—

Secretary DeVOS. Yeah.

Mr. TRONE.—I have been here the entire time and I respect that. There is still 300,000 as General Brown said of folks nationally who are paying the price that because the Department I think has intentionally slow-walked this by not having enough staff to process those claims for literally over three years now. It has been three years.

Do you believe that the insufficient number of staff in the past three years is contributed to the Department's inability to process these borrower defense claims?

Secretary DeVOS. No, sir, I don't. It really has been the court decision that stopped us from continuing the process.

Mr. TRONE. But the court decision we and I know we have talked about that. The court decision did not stop you from continuing to process. You could have continued to process while you went through the appeal. Let's talk about the facts a second.

Secretary DeVOS. Only if I was going to say yes, full forgiveness or no, you don't qualify.

Mr. TRONE. And I'm guessing there is a lot of full forgiveness out there given the horrible work that Corinthian and others did.

Secretary DEVOS. But we couldn't use the data. We couldn't use the data that we were using so—

Mr. TRONE. Let's look at the data—

Secretary DEVOS.—practically speaking we could not process.

Mr. TRONE. Let's look at the data a second on that. Let's look at the data a second. So on March 31 if you have 7 employees, how many claims does an employee process in a 40 hour work week?

Secretary DEVOS. That is not a relevant question because we haven't not been able to process—

Mr. TRONE. No, how many—it's a really, really relevant because—

Secretary DEVOS. No, because since May of 2018—

Mr. TRONE.—you got to have the people to do the work.

Secretary DEVOS.—we have not been able to process.

Mr. TRONE. You have to have the people to do the work.

Secretary DEVOS. Since May.

Mr. TRONE. Right now you talked about ramping up the 64—

Secretary DEVOS. And we have.

Mr. TRONE. So you are clearly ramping up the people because now you said whoa. We missed the ball. We saw that in 2016 it went through the roof, the claims did. You got hammered. But you only, but while you were cutting back the 7 people, now you have done a hockey stick and ramped it back up to 64—

Secretary DEVOS. No, sir. This—it's a convenient narrative but it's inaccurate.

Mr. TRONE. But the only way you are going to figure out staffing is how much work is there to do, how long does it take to do that work and then I can do my staffing model from that.

Secretary DEVOS. And we have continued to staff up and will continue to add to that if necessary to process the claims now that we have been able to implement the new methodology.

Mr. TRONE. We appreciate that. General Brown told the staff that since you've been in office about 50,000 people have had their claims reviewed.

Well, if there is 300,000 out there, at that current rate it is going to be 15 years for the first three years it took you to do 50,000.

These young people want to be educated but they were lied to by these institutions and I think the response has been a bit to run out the clock. A bit of tough luck. So we just need informed decisions based on the data to keep focusing if you could on the customer. Thank you.

Chairman SCOTT. The gentleman's time has expired. The gentlelady from Michigan, Ms. Stevens.

Ms. STEVENS. Thank you, Mr. Chairman. Secretary DeVos, we are here today to provide the public with a full understanding of the Department's failure to provide defrauded borrowers with a relief they are legally entitled to.

I would like for you to know a fellow Michigander, Erica. Someone I have had the privilege of getting to know. She, when she was a child, she wanted to become a lawyer and growing up she faced multiple challenges as many Americans do. She ended up dropping out of high school but still managed to get her GED at 21 while raising two children.

And she saw a commercial one day for Everest College, a Corinthian College in 2011. And she was recruited into the school's paralegal program. The recruiter told her that in order to become a lawyer, she had to be paralegal first. Erica was ecstatic to go back to school. She earned a 4.0 while she was there and after her first year, she took that next step.

She contacted a law school to learn what she had to do next to become a lawyer. And that's when she learned that Everest was not considered a legitimate program and she felt cheated, she was saddled with student loan debt and realized that the best choice she could make for herself and her family was to cut her losses and leave Everest.

Secretary DeVos, do you think Erica made a mistake in attending Everest?

Secretary DEVOS. Congresswoman, I can't comment to her decision there but I certainly can feel for her if that story is accurate and I look forward to if she's among the BD claims pending, making sure that we can address it promptly now that we have been able to—

Ms. STEVENS. Would you—

Secretary DEVOS.—start the process again.

Ms. STEVENS. Would you have advised Erica to continue attending Everest?

Secretary DEVOS. I can't comment to a hypothetical like that.

Ms. STEVENS. Erica is currently not working either as a paralegal or a lawyer but is instead living to paycheck to paycheck with no way to pay for more school to pursue the career she wanted and dreamed of and she is now in her mid-40's.

Do you believe she received any value from the education she received at Everest?

Secretary DEVOS. Again, I can't comment specifically to her situation. The story as you tell it is one that I can, I certainly feel for.

Ms. STEVENS. She, Erica applied for borrower defense in May 2015 and had her loans placed into forbearance. Three years later, the Department finally approved her application but then denied her a full discharge and it said that they would only relieve 50 percent of Erica's loans.

Why did she deserve to only have 50 percent of her loans relieved?

Secretary DEVOS. Well, I have to assume from what you've told me about her story that we were considering her under the first methodology that we had utilized. And that her, the program she attended, the earnings information from that, others that had graduated from that program were compared with earnings from like programs of other schools across the country.

And that was again, a formula and process that was put into place to consider each student's claim individually and uniquely.

Ms. STEVENS. Despite a court order, Erica's servicer started illegally collecting on her debt in 2019, this year and she became extremely worried when she saw all of her loans were back in repayment because she knows there is no way she is really going to be able to pay them.

What is stopping the Department from taking action to protect the hundreds of thousands of students like Erica who were cheated in this predatory way by these institutions?

Secretary DEVOS. Well, again, I can't comment specifically to her experience right now. I am happy to have General Brown's team look into it—

Ms. STEVENS. That would be great.

Secretary DEVOS.—and give specific information.

Ms. STEVENS. And I know Erica would, excuse me. I know she would love that and she said to me when I last spoke with her, she said, you know, the one thing I really want to do is make a difference for future people and make sure this doesn't happen again.

And, you know, I had a little bit of time to read through your testimony and kind of buried in there are thousands of stories like Erica's and she did want me to share this story and I appreciate you both taking it to heart and hopefully we can all continue to step up to address this for all Americans, all Michiganders so they have the opportunity to pursue their dreams and provide for their families going forward. And with that, Mr. Chairman, I will yield back.

Chairman SCOTT. Thank you. The gentleman from Massachusetts, Ms. Trahan.

Ms. TRAHAN. Thank you, Mr. Chairman. Secretary DeVos, thank you for being here today. Two days ago you announced the Department's new formula for calculating relief for students who have been cheated by fraudulent predatory for-profit colleges.

This formula would make, would take median earnings and subtract from it two standard deviations to determine the amount of one's borrower defense discharge relief. Now that is a lot of jargon. So I wanted to just try to put it into an example just so it made sense to me.

So a young woman, and we will name her Betsy, gets her diploma in business and administration and management from Corinthian. And it says here on this chart that the median comparison earnings for that degree is about \$18,000. And two standard deviations is about \$20,500.

Any, I mean, not to put you on the spot but do you know what 18,000 minus 20,500 equals? I hate public math. It equals negative \$2,500.2,500 dollars.

So using the new formula, you are basically telling us that in order for someone like Betsy to get full relief for the debt that she unknowingly incurred from a fraudulent institution she would have to earn negative \$2,500. Does that sound right to you using your formula?

Secretary DEVOS. No, it does not.

Ms. TRAHAN. Because that is what the numbers bear out. The Department of Education calculates the median earnings of Betsy's peers in her program at roughly \$11,700 to determine the percentage of relief that she will receive.

Any idea what the federal minimum wage is right now? We are trying hard in this committee to raise the minimum wage but today it stands at \$7.25.

So look. I just want to—if Betsy earns \$11,700 on an annual basis, that means her hourly wage is \$5.63. That's \$2 below the federal minimum wage.

So I guess are you, I—it is astounding to me but I think what you are telling me is that student borrowers like Betsy who graduate from a fraudulent program and earn \$2 less than the Federal minimum wage can only get 25 percent of their loans forgiven because they didn't have negative earnings.

Secretary DEVOS. No, Congresswoman, I don't think the story you're using here is an accurate one.

Ms. TRAHAN. I trust my math. I look at, I poured over several examples and I used your two standard deviations. I have, I don't have confidence in much, but I have a lot of confidence in the formula and how I used it for Betsy's use case.

Look, the new partial relief formula that you came out with two days ago, it doesn't benefit students who have been fleeced. It doesn't take into account individualized earnings, debt load, whether Betsy is back in a full-time or a part-time accredited college program which is why my friend from Pennsylvania, Representative Wild and economists alike call it nonsensical.

These are students who wanted nothing more than to get ahead, who took out loans in good faith and they were taken advantage of instead. And your response to them is to cheat them again. So, I know right now, you have the authority to provide full fair and immediate debt relief to student borrowers who were defrauded by these predatory colleges. And every day that goes by is a violation of students' rights and, frankly, it's criminal.

There are hundreds of thousands of innocent students with pending claims. That includes almost 3,000 in my home State of Massachusetts. On this Committee, our focus is creating opportunity and value for students with high quality affordable education.

The formula that you have developed, it is too little by far and it is too late and it does not demonstrate your commitment to our students. I yield back.

Secretary DEVOS. Mr. Chairman, if I could respond to that a moment.

Chairman SCOTT. You can respond, please.

Secretary DEVOS. Congresswoman, I am committed to treating each of the students who have filed borrower defense claims fairly and we believe that this methodology that has been developed is one that will treat each of them as an individual and will look at their program of study. If you are advocating for 100 percent loan forgiveness for all students who claim borrower defense claims, you have the power to get a law passed in this body and I encourage you to do so. If you pass that law, I will enforce that law.

Ms. TRAHAN. The formula, the way it is designed right now, it takes in median program earnings from other people who have been defrauded. Therein lies the problem. That is not a formula that makes sense when you're taking into account kids who have taken out loans, who have to go back to college, go back to school, with accredited program. Their debt load is already sinking them and now they are taking on more. Your formula is flawed.

Secretary DEVOS. I guess we will have to agree to disagree.

Chairman SCOTT. Gentlemen, time has expired. Gentleman from Minnesota, Ms. Omar.

Ms. OMAR. Thank you, Chairman. Secretary DeVos, thank you so much for being here and giving us the opportunity to have this conversation with you. I am curious if you are familiar with the Minnesota School of Business Business and Global University?

Secretary DEVOS. I'm not familiar with that specific school.

Ms. OMAR. Okay. Do you know that they were found to be engaged in consumer fraud?

Secretary DEVOS. If they were, I am assuming there are some borrower defense claims pending for them.

Ms. OMAR. Okay. So, let me just enlighten you. We have sent you many letters from our delegation. In my district, in 2016, the Courts found that Minnesota School of Business and Global University engaged in consumer fraud and purposefully deceived their students by misrepresenting the job opportunities that would be available to their criminal justice graduates.

Madam Secretary, that same year, your department independently reviewed the evidence and came to the same conclusion as the Courts. The students were blatantly misled and taken advantage of. 1,336 Minnesota students were systematically misled to believe that they will obtain a degree and credits that were essentially meaningless, losing not only \$33.8 million but their time and countless opportunities.

Let's take a minute to just imagine if these students, if these were not just students, let us imagine that they were corporations. The administration and our colleagues on the other side of the aisle and probably you would be up in arms. Corporate executives would not only get their debt forgiven by our government, they would also get compensation for their lost time, lost opportunities, and psychological distress.

But Madam Secretary, you don't seem to be up in arms. Nobody seems to be concerned with what is happening with these students, students who do not have access to corporate attorneys to make their case. Instead, they are struggling to make ends meet as they continue to face incurring interest, negative credit reporting, and the inability to restart their education. All the while hoping the government will do the right thing.

I would like to request unanimous consent to enter into the record 2 affidavits.

Chairman SCOTT. Without objection.

Ms. OMAR. These are from my constituents Whitney and Cheryl Slattern whose borrower defense application have been on hold since January of this year. Between the two of them, they have approximately 78,000 in crippling student debt. To make matters worse, once a borrower defaults, the consequences are severe and results in a snowball effect where a borrower might lose their eligibility to receive additional federal student aid and see devastating effects to their credit.

Memo after memo, the Education Department career staff sent you memos that indicate that these students deserve nothing less than full relief. I know that you have said you have not read these memos yet, but reports have come out and I would have expected that you would take the time to read them before appearing before

us today. I ask for unanimous consent to enter these 3 memos into the record.

Chairman SCOTT. Without objection.

Ms. OMAR. I feel like you should be ashamed of the fact that you do not have answers to these memos, that you have not looked at these memos, that you have not taken the responsibility that you have as a leader to be prepared to give us a response. And I think the public should be ashamed that they have a Secretary of Education that is not putting the interests of students before the interests of the wealthy that are benefiting from defrauding these students. I yield back.

Secretary DEVOS. Mr. Chairman, if I may respond.

Chairman SCOTT. Thank you. The gentlelady's time has expired. The Secretary can respond.

Secretary DEVOS. Congresswoman, with all due respect, I am very much focused on doing what is right for these students. And the memos to which you are referring, preceded me and they may have been relevant to—they were relevant to conversation about how we proceeded with policy, but administrations changed and policies change.

Ms. OMAR. They are precisely relevant to the conversation you were preparing to come to talk to us today. And in your preparation, you should have read those memos. I yield back.

Chairman SCOTT. Gentleladies, time has expired and I recognize myself for 5 minutes. First, a lot has been said about whether or not these are for-profits, private, nonprofits, or public. The fact is we have several hundred thousand complaints to fraud of borrowers defense for the public colleges. How many public, nonprofit, and public institutions have been subject to allegations of fraud?

Secretary DEVOS. How many. I do not have the specific breakdown here. I would be happy to get back with you on the question for the record.

Chairman SCOTT. Do you have very many complaints, public complaints?

Secretary DEVOS. There are quite a few. I mean, it is frankly surprising the number of—

Chairman SCOTT. If you can get that to us.

Secretary DEVOS.—claims that have been filed, like surprising institutions, so.

Chairman SCOTT. You have also indicated that you have remediated the credit report problem?

Secretary DEVOS. Yes. We have remediated the problems that it occurred.

Chairman SCOTT. Does remediate mean you have corrected the credit reports or that you have reimbursed people for loss of job or higher interest rates they might pay, or did you just correct the reports?

Secretary DEVOS. Whatever the issue was, we have remediated for with the—

Chairman SCOTT. Does that mean you—

Secretary DEVOS.—small exception of those whose addresses we can't track down.

Chairman SCOTT. Does that mean you have corrected the reports or compensated people for lost jobs or higher interest rates they may have paid for a diminished credit report?

Secretary DEVOS. We have corrected or remediated their credit reports.

Chairman SCOTT. Just credit reports.

Secretary DEVOS. Just specific credit report question.

Chairman SCOTT. Are you aware that the University of Phoenix recently agreed to \$191 million settlement?

Secretary DEVOS. I understand that and I also understand that the leadership there are formerly lead employees, political appointees of the Obama Administration.

Chairman SCOTT. That's fine. How many has the—did that settlement involve federal student loans?

Secretary DEVOS. I imagine that there are some Federal student loans involved there.

Chairman SCOTT. Were any Federal student loans involved in the settlement?

Chairman SCOTT. Excuse me, General Brown

General BROWN. Not that I am aware of or that we would—

Chairman SCOTT. There are requests for borrowers defense from the University of Phoenix. About 8,000, is that right?

General BROWN. Right now, today, we have 14,000 of those borrower defense claims are from the University of Phoenix.

Chairman SCOTT. Okay. What is the status of those?

General BROWN. Those applications are in various stages depending on when they were received.

Chairman SCOTT. Has any relief been granted?

General BROWN. I do not believe that—I can get that for the record and provide it for you, sir.

Chairman SCOTT. Okay. Now, as I understand it, if you have been defrauded, you should get relief if you have suffered financial harm and we have had back and forth about how you establish financial harm. If you have two similar schools and you have your comparison group where they did not lie and cheat and defraud the students, they just acknowledge that the credits were not transferable and you were not going to get a job, but people went anyway. And you have another school that, in fact, defrauded the students, lied to them about accreditation, lied to them about transferability, and lied to them about job placements, is it true under your formula you would get no relief because you don't show financial harm?

Secretary DEVOS. Mr. Chairman, the methodology looks at all programs across the country that are like programs to the one that the borrower is making the claim against.

Chairman SCOTT. Right. And if the one you are making a claim against in fact defrauded the students where the comparison group did not lie about the placement rate, did not lie about accreditation, did not lie about transferability or credits and ended up with the same income as the one that, in fact, defrauded the students, is it true that under your formula the students that were defrauded get no relief?

Secretary DEVOS. If there is no financial harm to the student making the claim, that would be correct.

Chairman SCOTT. Okay. And is it—I think we established that there is no individualized consideration that it is considered by class. You went to that college, if you make a lot of money or you did not make any money, you would get exactly the same relief?

Secretary DEVOS. The claim is against the student, not against that school and program.

Chairman SCOTT. Okay. Can you briefly describe what the Department admitted to when it admitted to gross negligence in the lawsuit that provoked the contempt of court?

Secretary DEVOS. I think those are attorney's words. What we have acknowledged—

Chairman SCOTT. The Department admitted gross—

Secretary DEVOS. What we acknowledged is that there were human errors made at Federal Student Aid and with our student loan servicers and that we acknowledge them. We take responsibility for them and we have corrected them.

Chairman SCOTT. Defendants respectfully submit that the Department's compliance report the undersigned counsel's representation in the October 7 hearing and the further information contained in this brief establish that compliance errors at issue here were not the result of any willful or intentional conduct but as the Court has recognized gross negligence, including negligent oversight of the department servicers. My time has expired and I yield to the Gentlelady from North Carolina for a closing statement.

Ms. FOXX. Thank you, Mr. Chairman. And I want to say publicly thank you for your response to what I considered inappropriate comments made earlier. I very much appreciate your response to that.

As we agree, oversight, and I said earlier, oversight is important and I stand ready. The Secretary has said she stands ready to work with the Chairman to conduct good oversight of not just the Education Department, but every venue we have any jurisdiction over. But we need to work in a bipartisan manner with the Secretary and solve the problems efficiently and focus as the Secretary does on helping students and not playing gotcha games with the Secretary.

And I ask you, Madam Secretary, to commit again today to working faster and harder to get to the information requested and respond as quickly as possible so we can all be clear and more direct about the concerns we have and whatever information we need.

And, Mr. Chairman, I would say when requests go to the Department, they be as specific as possible and, again, not trying to play gotcha games. Say did you get this memo on January 10th written before you came into office. Those are the kinds of things that should be said instead of going on fishing expeditions. The Higher Ed Act does not prohibit the Secretary from providing partial relief for successful borrower defense claims.

And I want to make an analogy here. I will bet you there is not a member of this committee who has not had a car accident or a problem in homeowners insurance. And I'll guarantee you that the insurance companies don't write you a check for what you think is your damage. They assess that damage. They look at your car. They came to your home. What these members are saying is you just write a check from the taxpayers and say it's okay if you tell

us you have been defrauded or you have been damaged. That is not the way it works.

We have set the federal government up as the biggest loan institution in the country. Now, we want it to be the biggest insurance company in the world and that is just not right. What has been going on is nothing new. Regulations under President Clinton, President Obama and, now, President Trump have all allowed for partial relief for successful borrower defense claims.

The grandstanding today but unfairness could all be resolved if Congress had amended the borrower defense provisions in any of the HEA reauthorizations over the last two decades. If Members of Congress do not like how much authority the statute has given the Secretary, then we should work together to amend the statute. No one has asserted that the Secretary has not followed the law. That is what oversight should be asserting if that is what it is we are doing.

And Mr. Chairman, we disagree on policy a lot of times, but we do not disagree that students represent not only our current situation in the nation but our nation's future deserve all the opportunities to succeed. And frankly, I am saddened that I need to remind my colleagues of this. I think we need to respect this institution and honor it with the decorum that it deserves and show the students how we should behave and be examples for them. Thank you, Mr. Chairman, for your indulgence today.

Chairman SCOTT. Thank you. I want to thank the Secretary for your participation today. We have heard very valuable information. Members may have additional questions for you and we will submit them to you in writing. Remind the Members that questions for the record must be submitted within 7 days and the hearing record will be open for 14 days.

I just want to say and, finally, no question of whether partial relief is available or not. But in some of these cases, the fraud was so widespread and the findings of the previous administration was at some of these degrees were absolutely worthless.

The University of Phoenix had a \$191 million settlement for fraud. Nothing has been done so far on federal loans to provide that relief. We would think that if the fraud has been well-established, that each person would not have to come up individually to prove individual fraud. If there is such widespread fraud, I think the burden ought to shift to the business.

And finally, a lot has been said about the Obama process. The memos that we have presented show that there was a process. They discharged loans for 28,000 borrowers and had a process that would have eliminated the backlog in a couple of months. As indicated we had not seen it. Obviously, we had seen it. We had not seen them in the submissions. But we got those memos showing the process from the media, not from submissions. So, we would expect if we had gotten those earlier we could have discussed them not as gotcha but as part of the process.

If there is no further business to come before the Committee, without objection, the Committee stands adjourned.

[Additional submission by Mr. Courtney follows:]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

December 14, 2017

MEMORANDUM

To: James Manning, Delegated the Authority to Perform the Functions and Duties of the Under Secretary

Through: Justin Riemer, Special Counsel

From: Steven Menashi, Acting General Counsel

Re: Legal bases for approval and discharge of pending borrower defense claims for former Corinthian students qualifying for approval on the grounds of Job Placement Rate, Guaranteed Jobs, and Transfer of Credit findings

I. Introduction

In connection with the Department's resumption of adjudications of Borrower Defense (BD) loan discharge claims from former students of Corinthian Colleges, Inc. (CCI), this memorandum summarizes and adopts in part the evidentiary findings and legal bases previously employed to approve claims for the CCI claim categories examined in the memoranda listed below. This memorandum also modifies the conclusions previously offered by the Office of the General Counsel (OGC) regarding the legal principles applicable to assessing the remedy for approved claims and the appropriate measure of relief for borrowers. Accordingly, this memorandum addresses issues related to the approval of claims made under the following claim categories for certain CCI-owned schools:

1. Job placement rate misrepresentations made to attendees of specified programs offered at Heald College campuses (Heald "JPR" or "Findings Claims"). The legal basis for the approval of JPR claims was previously offered in a May 14, 2015 memorandum (Appendix A).¹
2. Job placement rate misrepresentations made to attendees of specified programs offered at certain Everest/WyoTech campuses (Everest/WyoTech "JPR" or "Findings Claims").
3. Guarantees of employment by CCI, applicable to all CCI campuses between the time when CCI opened or acquired the campus and April 2015 ("Guaranteed Jobs"). The legal basis for the approval of these claims was previously offered in a January 9, 2017 memorandum from the Borrower Defense Unit (BDU) (Appendix B).

¹ Two versions of the Heald JPR Memorandum have circulated in draft form. This memorandum adopts, in part, the 11-page version that is found in Appendix A.

4. Misrepresentations regarding the transferability of credits at any Everest school or WyoTech's Laramie campus between the time when CCI opened or acquired the campus and April 2015 ("Everest/WyoTech Transfer of Credits"). The legal basis for the approval of these claims was previously offered in an October 24, 2016 memorandum from the BDU (Appendix C).
5. Misrepresentations regarding the transferability of credits at CCI's California Heald campuses after CCI acquired the school ("Heald Transfer of Credits"). The legal basis for the approval of these claims was previously offered in an October 20, 2016 memorandum from the BDU (Appendix D).

II. Background

Between May 2015 and January 2017, the Department approved relief for BD claims filed for over 30,000 borrowers who attended a CCI-owned institution. The Department approved the claims on one of the five bases for approval listed above because the Department concluded that CCI had made, on a widespread and systemic basis, unlawful misrepresentations to borrowers. Eligibility for approval under some of the categories of relief was limited to students who had enrolled in specific programs during particular time periods. The Department's evidentiary findings were based partly on information that borrowers submitted with their claims showing a pattern of wrongful conduct, such as misrepresentations by the school with respect to guarantees of employment or assurances about the transferability of a student's credits. The Department also relied on information supplied by state Attorneys General and gathered by the Department. In some instances, the Department corroborated its findings with information found on school promotional materials and websites. The Department's findings related to the Heald JPR claims were partly based on a fine letter to the CCI-owned Heald College on April 14, 2015,² and other findings were documented in internal recommendations from the BDU.

III. Legal Basis for Approval of Claims

A. Summary of Existing Legal Basis for Relief

Under Department regulations, "[i]n any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." 34 C.F.R. § 685.206(c)(1). If "the borrower's defense against repayment is successful," the borrower may be "relieved of the obligation to repay all or part of the loan and associated costs and fees." *Id.* § 685.206(c)(2). The Department may also, as it "determines is appropriate under the circumstances," reimburse the borrower for amounts paid toward the loan voluntarily or through enforced collection and approve certain other relief. *Id.*

While the Department has received claims from residents of all 50 states and the District of Columbia, the Department has approved CCI claims on the ground that CCI's conduct would give rise to a cause of action against CCI under California's Unfair Competition Law ("UCL"),

² Notice of Intent to Fine Heald College to Jack D. Massimino, President/CEO of Corinthian Colleges, Inc., from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group (April 14, 2015) ("Fine Letter").

which prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. California law applies to CCI because CCI was headquartered there, it engaged in the wrongful conduct there, and many of its students attended school there.³

The Department approved claims for borrowers who attested to the elements establishing a cause of action under the UCL. While the details for approval varied by category, the general analysis for relief under the UCL required the following conclusions: (1) CCI engaged in an unlawful or fraudulent business act, (2) the borrower suffered an injury in fact, and (3) the borrower relied on the misrepresentation made by the school in obtaining a loan.

B. Adoption of Existing Memoranda for Approval of Claims

The Department could have required each borrower to provide evidence for each of these elements rather than rely on attestations and inferences from common findings. Nevertheless, the Department has decided to allow claimants from CCI institutions to rely on the Department’s findings about CCI’s conduct and to attest to the elements of harm and reliance. In support of that decision, the Department will continue to rely—unless otherwise stated in this memorandum—on the findings for each of the five categories of claims that are outlined in the corresponding memoranda on which the Department has relied to date as those memoranda relate to establishing a borrower’s cause of action under the UCL.

This memorandum also adopts as final the following:

- Part I of the JPR Heald Memo attached as Appendix A, which was previously considered only a draft.
- Part I of the JPR Heald Memo’s legal analysis as to the legal basis for approval of the Everest/WyoTech JPR claims.
- The October 20, 2016 Heald Transfer of Credits Memo, attached as Appendix D, which was denominated a draft but which has been relied on and considered final.

IV. Legal Basis for Full Relief of Claims

A. Existing Legal Basis

In its previous memoranda, the Department concluded that all borrowers with successful claims should receive a full discharge of their loans, subject only to some restrictions for Guaranteed Jobs and Transfer of Credits claims partially barred by the applicable state statute of limitations. The memoranda purported to apply the UCL to determine the appropriate measure of relief, even though an award under the UCL aims at restitution, which is “the return of the excess of what the plaintiff gave the defendant over the value of what the plaintiff received.”⁴

³ The Department concluded, for example, that all Heald students would have standing to bring a hypothetical action against CCI under the UCL, and therefore CCI’s conduct could be said to give rise to a cause of action against CCI under that statute. See Heald Transfer of Credits Memo, Appendix D.

⁴ *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988 (9th Cir. 2015) (quoting *Cortez v. Purolator Air Filtration Products Co.*, 999 P.2d 706, 713 (Cal. 2000)).

In fact, the memoranda—specifically Part II of the JPR Memo from OGC attached as Appendix A and the Transfer of Credits memoranda from the BDU attached as Appendices C and D—disagreed over what might count as restitution under the UCL. One argument, advanced by OGC in May 2015, held that restitution should allow borrowers to “receive the amount paid to Heald, through loans, to attend its programs; i.e., tuition and fees,” regardless of the size of the loan or the value of the education received. The other argument, advanced by the BDU in October 2016, advocated “complete restitution of the amount paid by consumers,” meaning the full value of the loan, regardless of the amount paid to Heald. The BDU memos recognized that the value of the education received would “offset” the amount of relief, but the BDU argued that the education received by these borrowers had no value and therefore no offset should be applied.

Importantly, the BDU also concluded that “nothing in the borrower defense statute or regulation requires the Department to apply state law remedies when reviewing a borrower’s claim.” The regulation requires a borrower to allege an act or omission that would “give rise to a cause of action” under “applicable state law” in order to be eligible for BD relief, but it does not direct the Department to award relief to a claimant based on state law principles of restitution or damages. Instead, the borrower defense regulation provides that the Secretary has discretion to fashion relief “as the Secretary determines is appropriate under the circumstances.” 34 C.F.R. § 685.206(c)(2).

On January 19, 2017, OGC issued a memo disagreeing with the conclusion reached by the BDU in October 2016 that the federal borrower defense regulation and statute grant discretion to the Secretary to decide how to fashion relief. Instead, OGC concluded that the state law which gives rise to the legal claim against the seller must also be the basis for determining relief.⁵ In short, the January 19 OGC memo reasoned as follows:

1. The borrower defense rule for Federal Family Education Loan Program (FFELP) loans is the Federal Trade Commission’s Holder Rule.
2. The Holder Rule requires using the same law that gives rise to the legal claim to determine the offset against the lender (i.e. the relief). In the cases addressed by the Transfer of Credits memoranda, the law was the California UCL.
3. Because 20 U.S.C. § 1087e(a)(1) (the “parallel terms and conditions statute”) requires that FFELP loans and Direct Loans have the same terms, conditions, and benefits, the application of the Holder Rule for FFELP borrower defense claims requiring application of state law for relief must apply to Direct Loan borrower defense claims.

The OGC Memo otherwise agreed with the BDU’s analysis that complete restitution amounting to the full value of the loan would be appropriate relief under the UCL, abandoning OGC’s May 2015 position. While the January 19 OGC memorandum specifically addressed the Transfer of Credit claims, the BDU has applied its conclusions to the other claim groups as well.

⁵ See “Transferability of credit recommendations for Heald, Everest and WyoTech” from Office of the General Counsel to Borrower Defense Group (January 19, 2017) (Appendix E).

B. Modification of Existing Legal Basis For Calculating Relief

i. Secretary's Discretion to Determine Relief

It is now OGC's position that the BDU's analysis that Department regulations and the borrower defense statute allow the Secretary to assess relief in her discretion—that is, independent of the state law used to assess the cause of action—is the better conclusion. This conclusion should now apply to the assessment of relief for all of the claim groups. The Secretary, given her discretion under the HEA and borrower defense regulation to fashion relief, may look to the state law giving rise to the cause of action as a guide but is not required to do so.

OGC's earlier memorandum mistakenly applies the Holder Rule to Direct Loans in the context of borrower defense relief. OGC's memorandum overlooks the exception clause in the parallel terms and conditions statute and the existence of such an exception for borrower defense relief:

*Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers [of FFELP loans].*⁶

The "part" of the HEA referenced in 20 U.S.C. § 1087e(a)(1) is the part of the HEA containing the Direct Loan Program statutes and includes the borrower defense provision for Direct Loans which is also found in § 1087e:

*Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution ... a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.*⁷

The January 19, 2017 OGC memorandum recognizes that the above emphasized provision in 20 U.S.C. § 1087e(h) authorizes the Secretary to promulgate a regulation that would allow for the assessment of relief on some other basis but asserts that the Secretary did not do so:

[T]he Secretary by regulation *could* have provided that while borrower defense should be based on a state law cause of action, relief would be determined by some other law. However, he did not. ... [T]he borrower defense regulation does not specifically address what law is to be applied in determining relief. Absent such a regulation, § 1087e(a)(1) controls, and the Direct Loan borrower defense rule must be the same as that for FFELs – in other words, it is the Holder Rule.⁸

⁶ 20 U.S.C. § 1087e(a)(1) (emphasis added). "This part" references the Direct Loan part of the HEA.

⁷ 20 U.S.C. § 1087e(h) (emphasis added).

⁸ "Transferability of credit recommendations for Heald, Everest and WyoTech" from Office of the General Counsel to Borrower Defense Group (January 19, 2017) (Appendix E).

This analysis mistakenly overlooks provisions of the borrower defense regulation that, as stated in the BDU memoranda, decline to look to state law for fashioning relief and instead give the Secretary the authority to assess the remedy and relief owed to the borrower. As the BDU noted, “the Secretary has discretion to fashion relief as suited to the facts of a particular case”⁹ because the borrower defense regulation vests that discretion in the Secretary:

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation *to repay all or part of the loan* and associated costs and fees that the borrower would otherwise be obligated to pay. *The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances.*¹⁰

Such relief the Secretary may determine is appropriate includes “[r]eimbursement of the borrower for amounts paid toward the loan voluntarily or through enforced collection.”¹¹ As the BDU noted, “[t]he only statutory limit on the Secretary’s ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan.”¹²

The OGC memo appears to argue that, absent some explicit reference in the regulation directing the Secretary to use a different specific law to assess relief, the Department is limited to utilizing the same state law assessing whether the borrower has asserted a cause of action. This ignores the provisions in the regulation that grant the Secretary the discretion to determine how much relief should be awarded to a borrower.

Indeed, the codification in regulations of borrower defenses applicable to Direct Loans was necessary because the Holder Rule does not by its own terms apply to loans made by the federal government. The Holder Rule “applies only when the seller [i.e., the school] is arranging credit, through either an established pattern of referrals [to the lender] or affiliation [with the lender].”¹³ Thus, borrower defenses are available only when “credit is arranged or secured in connection with a continuing relationship between a seller and a creditor. In such cases a seller and creditor may properly be viewed as joint venturers.”¹⁴ Accordingly, the Department’s regulations incorporating the Holder Rule with respect to FFELP loans provide that borrower defenses are available only if the lender has a referral or affiliate relationship with the school.¹⁵ The Department has explained that such a relationship does not exist where the school and the lender cooperate merely by “performing specific duties required by the HEA and regulations” and the school “does no more than give its students *information* on the availability of student loans.”¹⁶

⁹ Heald Transfer of Credits Memo Claims at 16 (Appendix D). *See also* Everest/WyoTech Transfer of Credits Memo at 17 (Appendix C).

¹⁰ 34 C.F.R. § 685.206(c)(2).

¹¹ *Id.*

¹² Heald Transfer of Credit Memo at 16 (paraphrasing 20 U.S.C. § 1087e(h)).

¹³ Federal Trade Commission, Guidelines on Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses, 41 Fed. Reg. 20022, 20025 (May 14, 1976).

¹⁴ Federal Trade Commission, Preservation of Consumers’ Claims and Defenses: Statement of Enforcement Policy, 41 Fed. Reg. 34594, 34595 (Aug. 16, 1976).

¹⁵ 34 C.F.R. § 682.209(g).

¹⁶ U.S. Department of Education, Overview: Federal Trade Commission (FTC) Holder Rule 2 (Jul. 2, 1993).

The federal government does not provide Federal Student Aid as part of a joint venture with institutions but pursuant to its own sovereign interest and legal duty. If the same conditions applicable to FFELP loans governed borrower defenses to Direct Loans, no borrower defenses would be available because the requisite relationship between the school and the lender—that is, the federal government—would not be present. That is why the Higher Education Act provides that, “[n]otwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part.” 20 U.S.C. § 1087e(h). Borrower defenses to repayment of Direct Loans are available only by virtue of the regulations promulgated pursuant to that provision, namely 34 C.F.R. § 685.206(c), and would not be available by operation of the Holder Rule or the regulations that codify the Holder Rule with respect to FFELP loans, namely § 682.209(g). The HEA makes clear that the borrower defense regulations for Direct Loans govern “[n]otwithstanding any other provision of State or Federal law”—including the Holder Rule, its codification in § 682.209(g), and the parallel terms and conditions statute.

For these reasons, OGC now agrees with the BDU’s conclusion that “the borrower defense regulation clearly provides that the Secretary has discretion to fashion relief as suited to the facts of a particular case.”¹⁷

Because the regulation commits the choice of remedy to the Secretary’s discretion, the Secretary’s resolution of borrower defense claims is not subject to judicial review.¹⁸ The BDU’s Transfer of Credits memoranda cite multiple authorities for the principle that the Department enjoys wide discretion in fashioning discretionary relief.¹⁹ OGC agrees with the BDU’s conclusion that the Department has such discretion.

ii. Measure of Relief

In assessing the appropriate measure of relief it is important to note that few borrowers provided the Department with evidence of harm to support their claims. Even though the Department has determined that these borrowers made a prima facie case for borrower defense relief, the borrowers have generally not provided evidence of the scope of the resulting harm. Accordingly, the Department has examined other evidence in its possession to assess the relief owed to borrowers.

Previously, the Department assumed that CCI borrowers received a worthless education and therefore that full discharge (or discharge of all tuition and fees, depending on the advice) was appropriate for all CCI borrowers with valid claims. In its reevaluation of this assumption, the Department has sought to measure the value of the education CCI borrowers may have received in order to determine the appropriate measure of relief. In this context, “value” refers to the extent to which the education helped students to obtain gainful employment—that is, a paying job. While assessing the value of an education in such economic terms may not be appropriate in

¹⁷ Heald Transfer of Credits Memo at 16 (Appendix D).

¹⁸ 5 U.S.C. § 701(2); *Dalton v. Specter*, 511 U.S. 462, 477 (1994); *Webster v. Doe*, 486 U.S. 592, 601 (1988); *Heckler v. Chaney*, 470 U.S. 821, 838 (1985).

¹⁹ Heald Transfer of Credits Memo at 16-17 (Appendix D).

all contexts, the Department already evaluates the type of academic programs offered by CCI according to this metric. The programs CCI offered were legally required to provide training that prepares students for gainful employment in a recognized occupation (a “Gainful Employment” or “GE Program”),²⁰ and borrower defense claimants allege that CCI failed to provide that preparation and therefore hampered students’ ability to obtain gainful employment. For these reasons, the Department assesses the value of the education based on earnings, as it has done for all GE Programs pursuant to regulation. To determine value for the purposes of the CCI BD claims, the Department compared the average earnings of borrowers who enrolled in particular CCI programs with the earnings of those enrolled in the same GE Program at other schools that have a passing debt-to-earnings ratio under the GE regulations. The difference between these numbers provides a measure of the difference in value between the CCI program and a program in the same field that provided adequate preparation for gainful employment in a recognized occupation. It therefore provides a measure of the relief needed to put the CCI borrower in the position he or she would have occupied absent CCI’s misconduct.

The CCI borrowers affirmed in their applications that the primary reason for enrolling at CCI was to improve their careers and to make a better living. To the extent borrowers offer allegations of any harm in their claims, they focus on the struggles they have had in finding gainful employment. Accordingly, the methodology for determining relief quantifies the harm alleged by borrowers.

The Department is in a unique position to perform this analysis because it possesses detailed data about the performance of CCI’s academic programs, including how its students have performed in the job market since attending CCI. The Department also has detailed earnings information about the performance of graduates of GE programs in the same fields in which CCI borrowers enrolled. Pursuant to its GE regulations at 34 C.F.R. part 668, subpart Q, the Department has determined whether specific GE programs adequately prepared students for gainful employment in a recognized occupation by examining the typical loan debt versus earnings information for program completers and setting specific “passing” levels for such debt-to-earnings ratios. Utilizing the Department’s knowledge of these “passing” GE programs gives the Department a measure of the value of the corresponding CCI-provided programs.

A comparison of the CCI and GE data has led the Department to conclude that many CCI programs provided measurable value to students. The Department’s data comparison allowed it to determine the differences in earnings (both average and median) between CCI borrowers who enrolled in particular programs and borrower earnings for students who completed the same or similar GE programs at non-CCI schools. In other words, the comparison yielded a measure of the value a CCI borrower received versus what he or she could have reasonably expected to receive absent CCI’s misconduct. This is the proper measure of relief owed to the borrower. Therefore, the Department will award relief—up to the statutory cap of the full amount of the Direct Loan underlying a BD claim—by calculating the difference in earnings by percentage of the CCI borrowers against corresponding GE-passing program borrowers.²¹ This calculation will

²⁰ See 20 U.S.C. §§ 1002(b)(1)(A)(i), 1002(c)(1)(A), 1088(b).

²¹ Because of the difficulty in administering a true 1-to-1 inverse ratio of relief to borrowers the Department will award relief in increments of 10 percentage points with CCI borrower earnings within the 10 percent increment rounded down to be more favorable to the student. For example, under a true 1-to-1 inverse relief formula, a

be modified at the lower and higher ends of the earnings scale. CCI borrowers earning less than 50% of the earnings of graduates of GE-passing programs will receive a full discharge while CCI borrowers earning 90% or more of the GE-passing earnings will receive a discharge of 10% of their outstanding loans. As is the practice in the GE regulations, the Department will calculate both the average earnings and the median earnings and utilize the figure that is most generous to the borrower.

The Department's determination that borrowers with average or median earnings of less than half of their comparable GE-passing earners are entitled to a full discharge is reasonable and based on careful consideration of the evidence. If the data reveal that the average earnings of borrowers in a specific CCI program are not even half of those in a GE-passing program, that disparity suggests that the CCI program provided no measurable value to the CCI students. Even if some borrowers in the CCI program were able to obtain gainful employment, the data provide strong evidence that the program itself did little or nothing to prepare its students for success in the workforce. Those CCI programs where the graduates earn on average between 50% and 90% of the earnings of their peers in comparable GE-passing programs represent a different circumstance. The data reveal those CCI programs provided some value. While graduates of those programs may not have performed as well as those in comparable GE-passing programs, these CCI borrowers still obtained gainful employment with incomes at least half that of their peers in GE-passing programs. Their relief, therefore, will be designed to make them whole—that is, to put the CCI borrower in the same position as the borrower from a GE-passing program by affording relief in an amount corresponding to the difference between CCI-program earnings and GE-passing-program earnings. Finally, the minimum floor of 10% relief recognizes that, although the data reveal the value of the education in certain CCI programs was comparatively high, borrowers suffered some basic harm by virtue of the misrepresentations such that the Department cannot conclude that denying relief is appropriate.

This methodology rests on substantial evidence of the harm to borrowers that resulted from CCI's conduct—that is, the difference between the value of the education that borrowers received and an education that would have met borrowers' reasonable expectations of preparation for gainful employment. The Department utilized actual earnings data for borrowers maintained by the Social Security Administration. The Department compared these data with earnings data for GE-passing programs compiled pursuant to the gainful employment regulations. The GE data are well vetted, subject to challenge and correction by institutions, and already utilized to measure the quality of title IV, HEA programs, particularly as it relates to ensuring employment outcomes for graduates.

This methodology applies to all five CCI claim groups. While the legal and factual bases for the approval of claims may differ, the assessment of relief applies to all CCI claims approvable under the existing criteria. Accordingly, this memorandum supersedes those sections of prior memoranda which conclude that a full discharge should be entered for every successful claimant.²²

borrower with 47% of the earnings of a comparable GE program would be entitled to 53% relief but in our formula would be rounded up to 60% relief.

²² This memorandum also supersedes the analysis in the final paragraph of page 10 in the JPR Memorandum in Appendix A which argues for limiting relief to the cost of room and board, books, and transportation. As noted

iii. Other Authorities

As noted above, the question of the relief to be afforded to successful claimants under the borrower defense regulation is committed to the Secretary's discretion. The methodology she has adopted nevertheless finds support in the common law. A basic principle in the law of torts is that the victim of a fraudulent misrepresentation is entitled to recover the pecuniary loss he or she suffered as a result of relying on the misrepresentation, less the value he or she received in the transaction.²³

It also finds support in restitutionary principles under the UCL, which as noted aim at "the return of the excess of what the plaintiff gave the defendant over the value of what the plaintiff received."²⁴ In cases "[w]here plaintiffs are 'deceived by misrepresentations into making a purchase, ... the consumer has purchased a product that he or she paid more for than he or she otherwise might have been willing to pay if the product had been labeled accurately,'" and "restitution is based on what a purchaser would have paid at the time of purchase had the purchaser received all the information."²⁵ A student might, for example, be deceived by the misrepresentation that an academic program will prepare him or her for gainful employment and therefore take out a loan of \$100 to attend the program. In fact, the program provides only 55% of the preparation for gainful employment, based on a comparison with programs that do prepare students for gainful employment. Had the student known this information at the outset, he or she would have reasonably paid only \$55 for the program. Therefore restitution of \$45 is appropriate.

Such principles of restitution, like the borrower defense regulation, afford the decision-maker "broad discretionary power to order restitutionary relief ... in the absence of individualized proof."²⁶ In calculating "restitution, California law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation."²⁷

In exercising her discretion under the borrower defense regulation, the Secretary has drawn on these well-established principles to determine when and to what extent a borrower "is relieved of the obligation to repay all or part of the loan" and receives "such further relief as the Secretary determines is appropriate under the circumstances." 34 C.F.R. § 685.206(c)(2).

above, OGC previously abandoned that position, which in any event was based on a questionable understanding of the UCL and was disconnected from the remedial provision of the borrower defense regulation.

²³ Restatement (Second) of Torts § 549.

²⁴ *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988 (9th Cir. 2015) (quoting *Cortez v. Purolator Air Filtration Products Co.*, 999 P.2d 706, 713 (Cal. 2000)).

²⁵ *Id.* at 989.

²⁶ *Fletcher v. Security Pacific National Bank*, 591 P.2d 51, 57 (Cal. 1979).

²⁷ *Pulaski*, 802 F.3d at 988 (internal quotation marks omitted). For these reasons, even if the Secretary were to award remedies pursuant to the UCL, she would adopt the same methodology to calculate relief.

V. Statute of Limitations

The BDU should also continue to rely on the findings in the January 12, 2017 memorandum related to the statute of limitations for CCI Guaranteed Jobs and Transfer of Credit claims and section I(E) of the May 14, 2015 memo found in Appendix A for all JPR claims.²⁸

CC: Julian Schmoke, Chief Enforcement Officer, Federal Student Aid
Colleen Nevin, Director, Borrower Defense Unit

²⁸ Statute of Limitations Analysis Under the California UCL for Corinthian and ITT Borrower Defense Claims re: Guaranteed Jobs and Transfer of Credits, from Borrower Defense Unit to Office of General Counsel (January 12, 2017) (Appendix F).

[Additional submission by Ms. Davis follows:]



UNITED STATES OF AMERICA
Federal Trade Commission

Office of Commissioner
Rohit Chopra

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of University of Phoenix
Commission File Number 1523231*

December 10, 2019

Summary

- The FTC has uncovered that University of Phoenix, a massive for-profit university, scammed its students by luring them in with false job placement promises.
- Enforcement actions against bad actors in this sector can set the stage for student debt cancellation, revocation of taxpayer subsidies, and protection of hard-earned benefits for military service.
- This and other recent enforcement actions demonstrate the agency's reemergence as a critical watchdog of companies that abuse students, veterans, and taxpayers.

Introduction

Every year, roughly one million Americans default on their student loans. The consequences of default are devastating for both individuals and society. For-profit colleges enroll about 10 percent of students, but account for roughly 50 percent of defaults.¹

According to one analysis, students who attended just one of these colleges, University of Phoenix, owed nearly \$36 billion in federal loans as of 2014.² Many of them struggle deeply to repay: 72 percent of borrowers attending the school made no dent in their student loans at all three years after leaving school.³ During this time, most of them would have seen their balances balloon.

University of Phoenix is infamous for targeting servicemembers and veterans, who earn valuable benefits for their military service. These benefits translate into billions in revenues for the company and others in the sector.⁴ Just as the return of veterans from past conflicts led to an

¹ Howard R. Gold, *Who's at fault for student-loan defaults?*, Chicago Booth Review, (May 13, 2019), <https://review.chicagobooth.edu/public-policy/2019/article/who-s-fault-student-loan-defaults>.

² Adam Looney, Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults*, BROOKINGS PAPERS ON ECONOMIC ACTIVITY, (Fall 2015), <https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPPEA.pdf> at Table 5.

³ See U.S. Department of Education, *Most Recent Institution-Level Data*, COLLEGE SCORECARD, (Nov. 20, 2019), <https://collegescorecard.ed.gov/data/> (three-year repayment rate calculated from most recent institution-level data).

⁴ University of Phoenix was the number one recipient of GI Bill funds from 2009 to 2017, collecting nearly \$2 billion in tuition and fees. Veterans Education Success, *Should Colleges Spend the GI Bill on Veterans' Education or Late Night TV Ads?*, (Apr. 2019), https://vetsedsuccess.org/wp-content/uploads/2019/04/VES_Institutional_Spending_Report_FINAL.pdf at 6. In 2015, the Department of Defense sanctioned the University of Phoenix for its misconduct. *DoD Letter to University of Phoenix*, MILITARY TIMES, (Oct. 7, 2015), <https://ec.militarytimes.com/static/pdfs/DoD-Letter-to-University-of-Phoenix-10-09-2015.pdf>.

explosion in for-profit college fraud,⁵ similar problems coincided with the passage of the Post-9/11 GI Bill in 2008.⁶

After the financial crisis, many wondered whether the FTC would ever act to tame the latest abuses in the industry, despite its clear and unambiguous authority to do so.⁷ Today, the FTC is demonstrating that the agency is here to stay when it comes to policing the sector. The Commission has settled charges with the University of Phoenix that it deceived students about their job prospects. The company will pay \$50 million in restitution and will cease collection of certain unpaid tuition balances.⁸

I am hopeful that this action, along with recent actions against DeVry Education Group and Career Education Corporation, mark the beginning of a more concerted effort by the FTC to safeguard students and veterans from the consequences of debt and default.

History of FTC Efforts in the For-Profit Sector

The FTC has broad authority to target unfair and deceptive practices in the for-profit school sector, but its approach has varied over the years.

In the late 1960s, the passage of the Higher Education Act, combined with benefits for those returning from Vietnam, opened the floodgates to widespread fraud.⁹ In response, the FTC undertook a major industry-wide investigation, and began bringing lawsuits against for-profit colleges – filing more than two dozen from 1970 to 1974 alone.¹⁰ The Commission also introduced a Guide for Private Vocational and Home Study Schools, which detailed practices the FTC determined were unfair or deceptive. Finally, in 1976, the FTC published a landmark 552-report laying out problems in the sector and proposing a new enforcement approach.¹¹

The FTC's report was remarkable both for its breadth and for the extent to which its findings echo across the decades. After an investigation that included 87 volumes of documents, 44 days of hearings, and testimony from more than 400 witnesses, the Commission laid out in extensive detail some of the key problems in the sector. Among the illegal tactics the Commission found to be common were deceptive lead generation, false claims of affiliation with government or major

⁵ David Whitman, *Vietnam Vets and a New Student Loan Program Bring New College Scams*, THE CENTURY FOUNDATION, (Feb. 13, 2017), <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1>.

⁶ More than two decades ago, through the so-called 90/10 rule, Congress capped the percentage of revenue that for-profit schools can earn from U.S. Department of Education programs at 90%. See 20 U.S.C. § 1094(a)(24). This was a market test designed to ensure programs would meet quality standards that would attract students paying out of pocket. Many bad actors found a loophole and instead decided to engage in predatory recruiting of those with federal military benefits. See Veterans Education Success, *What is the 90/10 Loophole?*, <https://veteranseducationuccess.org/90-10-loophole>.

⁷ For example, in 2009, the National Consumer Law Center noted that “the FTC has mostly ignored the proprietary school sector” since the early 1990s. Deanne Loonin, *Comments in Response to Federal Trade Commission Request for Public Comments on Vocational School Guides Review*, NATIONAL CONSUMER LAW CENTER, (October 16, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/16-c.f.r.part-254-private-vocational-and-distance-education-schools-vocational-school-guides-543519-00008/543519-00008.pdf.

⁸ This settlement will not affect a borrower's federal loan obligations. Those who have been deceived should consider exercising their legal right to apply for discharges, as discussed further below.

⁹ See Whitman, *supra* note 5. As noted in the report, before he gained fame exposing the Watergate scandal, Carl Bernstein penned a groundbreaking report on vocational schools in Washington, D.C. that were defrauding students.

¹⁰ *Id.*

¹¹ Federal Trade Commission, *Proprietary Vocational and Home Study Schools. Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 438)*, (Dec. 10, 1976), <https://files.eric.ed.gov/fulltext/ED134790.pdf>.

employers, misrepresentations about transferability of credits, and “an appalling lack of substantiation for the job and earnings claims that are made.”¹²

The report criticized not only unscrupulous schools but also the efficacy of the FTC’s enforcement strategy. In particular, the report found that the industry was failing to comply with the Commission’s voluntary guides, and that “case-by-case adjudication was not achieving the requisite prophylactic effect.”¹³ As a result, the Commission turned to rulemaking, an effort it had begun in 1974, to establish industry-wide requirements backed by stiff civil penalties.

The Commission’s proposed rule required affirmative disclosure of placement and graduation outcomes, mandated a cooling-off period before enrollment, and laid out procedures for refunds for students withdrawing early. However, the rule was vacated in 1980,¹⁴ and the Commission returned to the approach that the agency’s report concluded was ineffective.

The last two decades have laid bare the problems with the FTC’s post-1980 approach. In the 2000s, for-profit enrollment surged, and a comprehensive Senate report showed that many of the problems highlighted by the FTC in the 1970s had reemerged.¹⁵ Veterans returning from Iraq and Afghanistan faced particularly problematic recruitment, and publicly traded companies like DeVry, University of Phoenix, and Career Education Corporation took in billions in veterans benefits. My former colleague at the Consumer Financial Protection Bureau, Holly Petraeus, noted that many colleges saw these students as “nothing more than dollar signs in uniform.”¹⁶

Recent FTC Actions

The latest epidemic of job placement misrepresentations and other forms of deception led to scores of actions by state Attorneys General. In spite of this renewed surge in for-profit college fraud, the FTC largely stayed on the sidelines – until more recently.

In 2016, the FTC charged DeVry with blatantly misrepresenting job placement outcomes to potential students.¹⁷ The company claimed 90 percent of its graduates obtained jobs in their field within six months of graduation, and that graduates earned 15 percent more than graduates of other colleges and universities. As alleged in the FTC’s complaint, these claims were unsubstantiated, and the company agreed to a multimillion dollar judgment settling charges.¹⁸

¹² Id. at 123 (lead generation); 381 (false claims of governmental or employer affiliation); 97 (transferability); 385 (placement).

¹³ Id. at 2. The Washington Post weighed in that “the FTC’s investigations have been necessarily tedious, its proceedings ponderous, and its penalties limited.” Id. at 2-3.

¹⁴ In 1980, the Second Circuit vacated the rule on the ground that the Commission failed to define with specificity the practices determined to be unfair and deceptive, among other grounds cited. See *Katherine Gibbs School v. FTC*, 612 F.2d 658 (2nd Cir. 1980).

¹⁵ For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success. Volume 4 of 4, 112th Cong., S. PRT. 112-37, (July, 30, 2012). https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.

¹⁶ Hollister K. Petraeus, *For-Profit Colleges, Vulnerable G.I.’s*, THE NEW YORK TIMES, (Sep. 21, 2011), <https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html>.

¹⁷ The case followed the FTC’s 2015 action against Ashworth College, which is not eligible to receive federal funds. Federal Trade Commission, *Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers*, (May 26, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about>.

¹⁸ Federal Trade Commission, *DeVry University Agrees to \$100 Million Settlement with FTC*, (Dec. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>. This case was brought almost exactly four decades after the Commission charged DeVry’s then-parent, Bell & Howell Company, with similar misconduct, a case that settled in 1980. See *In the Matter of Bell & Howell Co.*, et al., 95 FTC 761 (1980).

Earlier this year, the FTC brought an enforcement action against Career Education Corporation (“CEC”) for recruiting students who were lured to the school based on false pretenses. As alleged in the FTC’s complaint, the company used lead generators who falsely claimed to be affiliated with the U.S. military, tricking students who were looking to serve their country.¹⁹ This action followed FTC prosecution of lead generators like Sun Key that enabled CEC’s fraud.²⁰

Today’s action involves an industry giant, the University of Phoenix. The company launched a major “Let’s Get to Work” marketing campaign promising consumers a career fast-track to “partner” companies like Microsoft and Twitter. In the years after the recession when good jobs were scarce, this message surely held a lot of appeal for struggling Americans. But – as alleged in the complaint – it was false. No such partnerships existed. As the complaint details, a senior manager sounded the alarm that this marketing was misleading, but the company’s top executives ignored the warning, hoping the campaign would differentiate Phoenix from its competitors.²¹ Today’s order returns millions of dollars to students deceived by this campaign.

Moving Forward

I am glad to see the Commission renewing, on a bipartisan basis, its commitment to tackling fraud in this sector, and I thank our staff for taking on large industry players who flouted the law and exploited both taxpayers and students. The Commission should commit to several steps as it continues its work in this sector:

(1) End Wasteful Government Subsidies for Bad Actors

Taxpayers should not be subsidizing fraud. The Departments of Veterans Affairs, Defense, and Education have mechanisms to suspend participation of bad actor schools from their programs, and the Federal Trade Commission plays an important role. For example, the Secretary of Veterans Affairs can deny GI Bill participation to any program that “utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading.”²² The law specifically contemplates a role for the Federal Trade Commission to produce findings from its investigations so that the Secretary of Veterans Affairs can act on them.²³ The FTC has significant expertise in identifying unlawful, deceptive practices, and the conduct outlined in the

¹⁹ Federal Trade Commission, *Operator of Colorado Technical University and American InterContinental University Will Pay \$30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools*, (Aug. 27, 2019), <https://www.ftc.gov/news-events/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental>.

²⁰ Federal Trade Commission, *FTC Takes Action against the Operators of Copycat Military Websites*, (Sep. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>. The FTC has brought actions against both lead generators, like Sun Key, and those who purchase leads, like CEC. This sends a clear message that schools cannot outsource fraud to third parties with impunity.

²¹ Complaint ¶¶ 18-29.

²² 38 U.S.C. § 3696. See also Federal Trade Commission and Department of Veteran Affairs, *Memorandum of Agreement Between the Federal Trade Commission and the Department of Veteran Affairs*, (Nov. 29, 2018), https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-va_memo_of_agreement_2018_1.pdf.

²³ Baldwin, E. and Meyer, C., *Memorandum RE: Veteran Affairs’ Failure to Protect Veterans From Deceptive Recruiting Practices*, THE JEROME N. FRANK LEGAL SERVICES ORGANIZATION, (Feb. 26, 2016), https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/4/59fa600671c10b386ab1d1f9/1509580807045/Yale_Law_School_Analysis_of_VA_Authority.pdf (analyzing VA authority to cut off GI Bill funds, and the role of the FTC in coordinating efforts).

Commission's complaints suggests that the Secretary of Veterans Affairs may need to disqualify or sanction companies subject to recent FTC enforcement actions.²⁴

(2) Facilitate Student Loan Cancellation for Victims

Under the Higher Education Act, borrowers with federal student loans who were subjected to unlawful conduct may be eligible for student loan cancellation by the Secretary of Education, who can then recoup funds for taxpayers from bad actors.²⁵ When our investigations determine that deception has taken place, we should aim to publish evidence that supports borrowers seeking to exercise their rights, which ultimately increases the cost of violating the law. This will further our goal of deterrence, while also leading to more substantial relief for borrowers.²⁶

(3) Ban the Worst Practices and Quickly Attack Emerging Risks

Given the decades-long problem of deception regarding job placement misrepresentations, the Commission should seek to eradicate the problem more systemically. By noticing market players of previous Commission orders on job placement misrepresentation, the Commission can trigger stiff civil penalties for those who repeat that conduct.²⁷ The Commission should also consider putting into place clear rules to clean up the market, such as a ban on placement or accreditation misrepresentations, given the limitations of case-by-case enforcement.²⁸ Finally, the Commission must work hard to quickly address emerging risks that are the root causes of student loan distress – such as those posed by unscrupulous online program managers signing up students for online education²⁹ – rather than expending our limited resources on scams spawned by these bad actors.³⁰

²⁴ To be eligible for federal aid, institutions must be accredited. It is worth noting that each of the institutions charged by the FTC since 2016 is accredited by the Higher Learning Commission, which is supposed to be ensuring that its members treat students "ethically, respectfully, and professionally" in recruitment. Higher Learning Commission, HLC Policy: Recruiting, Admissions and Related Institutional Practices, (Nov. 2017), <https://www.hlcommission.org/Policies/recruiting-admissions-and-related-institutional-practices.html>. The FTC's lawsuits indicate they did not.

²⁵ 20 U.S.C. § 1087etb).

²⁶ The principle of canceling loans that were extended on a fraudulent basis goes back decades, and has earned bipartisan support. In 1975, former FTC Chairman and then-Secretary of Health, Education, and Welfare Caspar Weinberger made clear that his Department would recognize fraud as a valid defense to repayment, and he underscored the need for vigorous oversight. See David Whitman, Vietnam Vets and a New Student Loan Program Bring New College Scams, THE CENTURY FOUNDATION, (Feb. 13, 2017), <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/?session=1>.

²⁷ See 15 U.S.C. § 45(m)(1)(b) (authorizing civil penalties against firms that knowingly engage in conduct determined by the FTC, in a litigated order, to be unlawful.) In 1971, the Commission upheld a finding (Initial Decision Fndg. 17) that a school violated the FTC Act when it falsely claimed "hundreds" of its graduates obtained jobs in their chosen field after graduation. See In the Matter of E. Detective Acad., Inc., et al., 78 FTC 1428, 1461 (1971). The FTC should notify schools about this and any other applicable orders, which can trigger civil penalty liability for those that engage in similar misrepresentations.

²⁸ These limitations are outlined in detail in the Commission's 1976 report, which concluded that, in contrast to litigation, "rulemaking sets bright-line standards for all to see and follow in the future, [thereby allowing] each industry member to fashion its behavior accordingly and to be assured that all his competitors are subject to similar requirements." Federal Trade Commission, Proprietary Vocational and Home Study Schools. Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 438), (Dec. 10, 1976), <https://files.eric.ed.gov/fulltext/ED134790.pdf> at 540. The Second Circuit's concerns with the Commission's previous proposal could be easily remedied.

²⁹ Hall, S. and Dudley, T., *Dear Colleges: Take Control of Your Online Courses*, THE CENTURY FOUNDATION, (Sep. 12, 2019), <https://tcf.org/content/report/dear-colleges-take-control-online-courses/>.

³⁰ The Commission is at its most effective when it targets the causes of borrower distress, and not just the symptoms. Through "Operation Game of Loans," the Commission has devoted substantial resources to shutting down student debt relief scams, but these actions may not have been necessary had there been more effective oversight of for-profit colleges and student loan servicers by the FTC and other federal regulators. In contrast, Commission initiatives like the Holder Rule and enforcement efforts against deceptive lead generators target the core incentives driving fraud.

Conclusion

Today's action is an important milestone for the Commission. It concludes a years-long investigation of a massive for-profit college owned by influential investors, and it returns money to students who have been harmed. This and other recent actions finding unlawful, deceptive conduct will lay the groundwork for additional recoveries by student loan borrowers and taxpayers. Moving forward, it will continue to be critical to identify emerging unlawful practices in this sector *before* they inflict pain on individuals, honest businesses, and the country.

[Additional submission by Mr. Grijalva follows:]

CLASP

Policy solutions that work for low-income people

August 30, 2018

Jean-Didier Gaina
U.S. Department of Education
400 Maryland Avenue, SW
Mail Stop 294-20
Washington, DC 20202

Docket ID ED-2018-OPE-0027

Dear Jean-Didier Gaina:

Thank you for the opportunity to comment on the Department of Education's (ED) proposed student loan borrower defense to repayment rule.

As a non-profit, anti-poverty organization, the Center for Law and Social Policy (CLASP) promotes federal and state policies that give low-income people economic security. Postsecondary education can play a key role in helping improve low-income families' economic mobility. However, public policies and practices must prioritize equitable opportunity for low-income students, particularly students of color. The changes proposed in the above-mentioned Notice of Proposed Rulemaking falls short on that measure. While the NPRM suggests that the proposed changes to the borrower defense rule will result in \$12.7 billion in "savings," it comes at a tremendous cost to students. We are deeply concerned that this rule will cause long-term harm to student borrowers and will allow for bad practices to again take root.

We are particularly concerned about the impact that this rule would have on students of color. As a result of federal policies that have exacerbated intergenerational wealth disparities between whites and historically underrepresented groups, students of color have less familial wealth and are therefore more likely to borrow federal student loans. Students of color also disproportionately **enroll at** for-profit colleges. For-profit colleges, as the notice cites, are most likely to engage in the bad behavior that leads to successful borrower defense to repayment claims (page 329).

The proposed rule sends a clear message that ED, the designated overseer of this debt, feels it has no obligation to protect the individuals who hold it. It abandons consumer protections designed to protect students and consistently sides with institutions that adopt the worst practices. The proposed rule does this in several specific ways:

Disallows Collective Claims

The proposed rule makes changes to the current rule in ways that harm consumer protection and significantly shifts the existing balance of power—already heavily tilted in institutions' favor—away from students. Specifically, it would no longer allow groups of borrowers who were defrauded by the same institution to have their loans discharged as a group. This change would be extremely damaging to low-income borrowers.

ED's belief that "[a]n individual process would offer all borrowers fair and equal access to defense to repayment relief" does not accord with the reality of low-income borrowers' lives. Forcing students to pursue relief on their own means each must find representation (or navigate the process alone), collect all the required documentation available that would justify their claim, and have the financial luxury to wait for relief while their claim sits in the queue until it is decided. By comparison, under the current rule, borrowers need only demonstrate they were part of the same widespread institutional mistreatment as their fellow classmates.

If a low-income borrower were to get legal assistance to make a borrower defense claim, they would likely turn to a legal services agency. These organizations are overburdened as it is; by some measures, there is less than **one lawyer per 10,000** low-income people to handle civil matters like student loan discharge. What ED's proposed provision really does is limit access to relief exclusively to students who have the time and financial resources—and who are able to meet the strict time deadlines set elsewhere in the proposed rule—to see the process to the end. Low-income and students of color have the most power and access to legal representation when they can take collective action. We therefore strongly urge ED to maintain current group discharge ability.

Endorses Arbitration Agreements

In the proposed rule, ED suggests rolling back rules to restrict forced arbitration, arguing that it is a more affordable and faster alternative to lengthy legal proceedings. The rule suggests that arbitration may be "more accessible to borrowers since it does not require legal counsel." In reality, students would be at a distinct legal disadvantage against potentially large for-profit institution chains that can afford high quality legal counsel. For example, at its peak, Corinthian Colleges was **valued at \$1.7 billion**. A low-income (probably working, possibly parenting) borrower who has many other life matters to handle in addition to seeking the relief they deserve cannot hope to prevail against an institution of that size. Moreover, institutions are advantaged by the nature of these agreements, which allow them to choose the arbiter who will hear the dispute.

As further proof that arbitration agreements aren't in a borrower's best interest, research shows these agreements are typically used by organizations where there was already a significant power imbalance in favor of the employer or institution. **The Economic Policy Institute has found** that the use of mandatory arbitration among employers is much more common in low-wage workplaces and in industries that are disproportionately female and Black. While citing new Supreme Court precedent in *Epic Systems Corp. v. Lewis* may support ED's position, numerous **labor experts agree** that the practical impact of that decision specifically, and the existence of class action bans and arbitration in general, chill the ability for individuals to fight against bad behavior perpetrated by large businesses or entities. ED must keep in place, and enforce, the current ban on arbitration and class action waivers.

Narrows the Definition of Misrepresentation While Raising the Evidentiary Threshold

Similarly, the proposed rule gravely reduces a student's ability to hold accountable those institutions that are intentionally deceptive and take students' time, money, and hope for a better economic outcome. The proposed rule restricts borrower defenses to repayment by eliminating altogether breach of contract and state law judgment provisions, excluding quality of education, and raising the standard students must meet to show misrepresentation.

The rule proposes a standard for borrowers that would be practically impossible for anyone to meet. Declaring that borrowers must, by a preponderance of the evidence, demonstrate that the institution “acted with an intent to deceive, knowledge of the falsity of a misrepresentation, or a reckless disregard for the truth” is a bad faith standard. Under what circumstances could borrowers be reasonably expected to know what an institutions’ intent was? How were they to know to collect evidence at the time of enrollment (or whenever the misrepresentation took place), which was likely years prior to their claim? ED further proposes the unreasonable standard that the borrower must have “reasonably rel[ie]d” on that information to enroll, and that decision to enroll must result in “financial harm.” (For affirmative claims, ED proposes an even higher evidentiary threshold, clear and convincing evidence, which aligns neither with consumer protection law nor with ED’s other administrative proceedings.) Standards that no one could meet must be abandoned.

Even more concerning, ED suggests it might require borrowers to submit additional evidence—disguised benignly in the notice as “information”—about the borrower’s personal employment history. Asking for a borrower’s on-the-job performance, results of drug tests, criminal history, driving history, and/or health history is completely inappropriate and has no bearing on the alleged bad action(s) of the institution. Given our country’s structural racism that over-criminalizes people of color and impacts their ability to find employment, borrowers of color would likely appear less deserving of forgiveness based on information that could be contained in that submission.

Because ED doesn’t provide one, it’s hard to determine a justification for these requirements, other than to pre-emptively discourage borrowers from filing a claim in order to avoid having to comply with such a potential “information” request. It is never appropriate for ED to hold a borrower’s loan discharge hostage in exchange for this information. This is also true of the proposal to allow institutions to withhold a student’s transcript if their loan has been discharged.

Potentially Eliminates Affirmative Claims – and Modifies them in Damaging Ways

In terms of the types of claims ED will accept, the choice to allow only defensive claims has costs: it means that borrowers in near-distress, but not yet in collections or other default-triggering proceedings, have no options for relief without first defaulting. Defaulting on student loans has long-lasting consequences for borrowers. For instance, it can limit their ability to continue their postsecondary education elsewhere, and negatively impact their credit score, which can, in turn, limit their ability to rent or purchase a home, buy a car, or find and maintain employment. Allowing both defensive and affirmative claims is the best option for borrowers and for taxpayers.

However, the affirmative claim system ED has proposed is unacceptable. For one, students would no longer have the opportunity for loan discharge if the school offers a teach-out; the student would be required to participate in the teach-out and afforded no debt relief option. There are countless legitimate reasons why a student would decline a teach-out. For example, students may have concerns over program quality, or face challenges attending due to a lack of transportation, inconvenient class times, or an illness. This provision therefore only serves to punish the student for institutional mismanagement.

The proposal also establishes a two-tiered standard for the amount of time the borrower has to file a claim, depending on whether it is a defensive or affirmative claim. While the nature of the standard itself appears arbitrary, what’s most troubling is that students who have defaulted on their loans

have only a tiny window in which to file their claims: 30-65 days after receiving a notice of collection. This places significant undue burden on the borrower and decreases the likelihood that they will file a claim at all. A multiple year window—or no time limit—is in the best interest of borrowers.

General Concern Given Other Pending ED Proposals

Our final concern is the potential negative impact that implementing this rule could have in combination with other changes proposed by ED (specifically, Docket IDs ED-2018-OPE-0042 and ED-2018-OPE-0076). Given that these rulemaking processes are advancing in tandem, it is difficult to ascertain what the collective impact of these changes will mean for students.

ED-2018-OPE-0042 would repeal the gainful employment rule without a replacement accountability system. The repeal would make college enrollment less transparent and cause students to enroll in low quality programs, including those that have already been identified as low quality under the existing rule. Presumably, poor outcomes in these programs are linked to a lack of focus on student success and to harmful practices that could serve as a legitimate borrower defense to repayment. The gainful employment rule can stop federal student loan funds from flowing into a low-quality program in the first place. ED's rescission would lead to more bad debt and, given the draconian changes proposed by the rule that is the focus of this letter, debt that borrowers may be stuck with for a lifetime.

ED-2018-OPE-0076 would alter accreditation, the credit hour standard, distance education, and a host of other measures that are not clearly defined. If implemented, it would have untold impacts on students who may need to make a borrower defense to repayment claim. For example, one area of consideration is "the arrangements between an institution and another institution or organization to provide a portion of an educational program." Allowing for a freer flow of title IV aid to private organizations creates new opportunities for fraud. Even if borrowers are able to identify that fraud after the fact, the proposed borrower defense rule would offer them no support.

In addition, that notice proposes discussion of the "roles and responsibilities of institutions and accrediting agencies in the teach-out process," which as we mention earlier in the letter, is an area directly related to borrower defense.

In total, these changes would generate a cost impact much different from what is calculated here. Such an extensive accountability rollback would lead to even more bad loans plus fewer discharges compared to current baseline. It is very likely that the estimated \$10.5 billion in forgiveness taken away from borrowers by the defense to repayment rule would be much higher. While some might think it is good to save so much taxpayer money, this "savings" is a quirk of government accounting and does not have such a meaning for those affected.

Under this proposed rule, low-income students and students of color would incur billions of dollars of additional debt while producing few, if any, tangible benefits for students. This student loan debt limits their ability to be full participants in our economy and care for themselves and their families. The rule also holds the potential to exacerbate existing wealth inequities faced by students of color.

Postsecondary education and training can be a transformative experience, one so powerful that it can lead to permanent financial stability. However, it is the responsibility of the Department of Education to ensure that students receive quality education and to protect students from low-quality

programs that only deliver debt. There are some things that ED can't recoup for students — like the time away from their families while commuting to and attending school, or their own hard-earned money that went toward their education. But ED should never make it harder for students to get back what they deserve.

We therefore strongly urge ED to abandon what will ultimately be a giveaway to undeserving institutions and allow the final 2016 rule to go into full effect.

Sincerely,

Lauren E. Walizer
Senior Policy Analyst

[Additional submissions by Ms. Hayes follow:]

To: Under Secretary Ted Mitchell
 From: Borrower Defense Unit
 Date: January 9, 2017
 Re: Recommendation for Corinthian Borrowers Alleging That They Were Guaranteed Employment

Corinthian Colleges, Inc. ("Corinthian") consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. Accordingly, the Borrower Defense Unit recommends full relief for Corinthian borrower defense (BD) applicants who submit "guaranteed employment allegations" – that is, borrowers who (1) enrolled at any Corinthian-operated Heald, Everest, or WyoTech campus between the time Corinthian opened or acquired the campus and April 2015; and (2) alleged that they were promised, guaranteed, or otherwise assured that they would receive a job upon graduation, or that all graduates obtain employment (implicitly including themselves).

I. Summary of Corinthian's Representations to Borrowers Promising Employment

In BD applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that they would be placed in jobs. These oral representations sometimes took the form of a guarantee regarding the individual student and sometimes took the form of a guarantee of universal employment for graduates. In both cases, the obvious impression to students would have been that 1) the value of the education would be substantial, and 2) they would get jobs upon graduation.

These representations occurred both in person and during telephone calls with prospective students. Borrowers' allegations of "guaranteed employment" are unprompted,¹ specific, and consistent across a span of years. Indeed, the Department has received consistent guaranteed employment claims from borrowers at every campus sampled, including borrowers who enrolled between 1998 and 2013, demonstrating that personnel made consistent guaranteed employment representations throughout the entire time that Corinthian operated its schools. Taken together, based on an evaluation of the credibility of those statements, as well as Corinthian's record of making misrepresentations to prospective students,² a preponderance of the evidence demonstrates that Corinthian promised borrowers that they would receive jobs upon graduation.

A. Guaranteed Employment Representations at Heald College

At Heald, of the 1015 claims sampled, 141 (13.9% of the total) include allegations of guaranteed employment.³ The high incidence of guaranteed employment allegations was evident at all Heald campuses. At Heald Modesto, for example, of 61 BD claims sampled, 9 allege guaranteed employment (14.8% of the

¹ All of the above student statements came from a variety of different types of applications including the Heald, Everest, and WyoTech attestation forms ED created for job placement rate claims, various versions of the Debt Collective forms, and narratives in Word documents or the bodies of emails. The majority of these allegations are unprompted—some versions of the Debt Collective form ask about "false and misleading conduct relating to job prospects," but ED's attestation form only instructs borrowers to provide "any other information...that you think is relevant."

² See discussion below, Section II, describing Corinthian's misrepresentations regarding job placement rates.

³ This count excludes allegations that may pertain to guaranteed jobs but that were not sufficiently clear or specific to qualify for relief. For example, allegations that Corinthian's career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment allegations.

total).⁴ A sample of claims from Modesto borrowers demonstrates the consistency and specificity of guaranteed employment representations made by school representatives:

- "Heald college recruiters stated, 'I was guaranteed' to obtain a job after graduation."⁵
- "I was told that when I finished my program I would automatically have job placement and never received that placement."⁶
- "Heald promised me a job placement in the field. To this day, I haven't been able to find a job in my field, or a good paying job."⁷
- "I was given the false pretense that I could obtain a career in law enforcement with an Associate's degree and was guaranteed job placement."⁸

Guaranteed employment allegations appeared with similar pervasiveness and consistency at all of the other 11 Heald campuses. A sample of these claims, detailed below, demonstrates the high incidence of guaranteed employment misrepresentations at the school.

- Heald Concord: "During my experience, they promised me jobs after graduation . . . I still have the same jobs after graduation and Heald did nothing to help me . . . Heald College promised that they will find job for me upon graduation."⁹
- Heald Honolulu: "Upon admission, my admission's advisor, Roy Honjo, informed that an associate's degree in applied science in Health Information Technology (HIT) would provide me many job opportunities . . . He insisted I would find a job that would suit me and would be a smart decision to pursue."¹⁰
- Heald Roseville: "When I first looked into Heald College and spoke with the Academic Advisor, I was promised a job position within six months. It is now 2015 and I have yet to have ever worked in a medical office. The degree has done nothing for me."¹¹
- Heald Salinas: "When I first enrolled, they said I had a job at the end of my education."¹²
- Heald San Jose: "They stated on many occasions that after I graduate and complete the program that I would be placed in job where I would be able to pay off my student loans easily... They guaranteed job placement and never delivered."¹³
- Heald San Francisco: "Heald College's promises of guaranteed job placement after graduation sold me on becoming a student."¹⁴

⁴ The Modesto campus was selected because relatively few Modesto borrowers qualified for relief based on ED's findings regarding job placement rates. Modesto was a relatively new campus, and therefore had calculated placement rates for fewer years in the period surveyed.

⁵ BD155524.

⁶ BD155784.

⁷ BD155698.

⁸ BD154018.

⁹ BD151426.

¹⁰ BD1600328.

¹¹ BD157436.

¹² BD151163.

¹³ BD153799.

¹⁴ BD153784.

Heald Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
Heald Modesto	61	9	14.8%
Heald San Jose	151	29	19.2%
Heald Rancho Cordova	40	5	12.5%
Heald Roseville	56	9	16.1%
Heald Hayward	138	18	13.0%
Heald Stockton	125	11	8.8%
Heald Concord	150	22	14.7%
Heald Fresno	103	11	10.7%
Heald Honolulu	63	10	15.9%
Heald Portland	24	3	12.5%
Heald Salinas	43	4	9.3%
Heald San Francisco	61	10	16.4%
TOTAL	1015	141	13.9%

B. Guaranteed Employment Representations at Everest and WyoTech

The high incidence of guaranteed employment allegations at Heald was evident at Everest and WyoTech, as well. At Everest, 231 out of 1277 BD claims sampled, or 18.1%, made guaranteed employment allegations. At Everest Braddon, for example, 45 of 305 claims sampled, or 14.8% of the total, alleged guaranteed employment. A sample of claims from Everest Brandon borrowers follows:

- "They told me that every student that graduated the program was placed."¹⁵
- "I was told that I would be able to attain a job in my field with no problem. I have applied to multiple agencies and was told I was not qualified."¹⁶
- "I was told I would find a job in my field . . . I 'graduated' and still can't find a job that will honor my degree."¹⁷
- "I was told that I would be placed into a career field of my studies, but I was not."¹⁸

The Department sampled claims at 22 Everest campuses¹⁹ across ten separate states (AZ, FL, MI, MA, TX, VA, CO, WI, NY, CA). Just like the Everest Brandon campus discussed above, the guaranteed employment allegations were common at all of these campuses and were distributed roughly evenly throughout the period those campuses were owned and controlled by Corinthian. Most importantly, the review of these claims across campuses and years demonstrates that students made substantially similar guaranteed employment allegations – whether the student enrolled at Brandon in 1998 or Rochester in 2008.

¹⁵ BD151311.

¹⁶ BD150332.

¹⁷ BD1612793.

¹⁸ BD1614055.

¹⁹ The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The 22 campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.

Similarly, at WyoTech, 64 out of 455 BD claims sampled, or 14.1%, alleged guaranteed employment. At WyoTech Laramie, for example, 8 of 31 claims, or 25.8% of the total, alleged guaranteed employment. A sample of claims from WyoTech Laramie borrowers follows:

- “They promised me a high paying career and said they would find it for me after graduation. They stated that all of the students who pass the program . . . will have jobs waiting for them.”²⁰
- “The education was sold as a way to guarantee future employment, with access to a nationwide network of job placement experts.”²¹
- “The school was promising a career in the field after schooling.”²²
- “[They] would say that just by speaking the name Wyotech you so get hired and make over 100K a year. They said it would be automatic hiring and that the industry knows the Wyotech name.”²³
- “We were recruited hard and we were promised [that] [name redacted] . . . would have his choice of many fine, well-paying positions once he completed his studies.”²⁴

The tables below summarize the number of guaranteed employment allegations at Everest and WyoTech for all of the sampled campuses:

Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
Everest Brandon	305	45	14.8%
Everest Grand Rapids	46	3	6.5%
Everest Largo	31	6	19.4%
Everest Ontario Metro	34	7	20.6%
Everest Orange Park	36	9	25.0%
Everest Orlando North	47	6	12.8%
Everest Orlando South	226	33	14.6%
Everest Phoenix	81	40	49.4%
Everest Pompano Beach	97	9	9.3%
Everest Rochester	53	14	26.4%
Everest Tampa	32	9	28.1%
Everest San Bernardino	15	1	6.6%
Everest Milwaukee	38	6	15.8%
Everest Colorado Springs	37	10	27.0%
Everest Ft. Worth South	54	8	14.8%
Everest Tyson's Corner	15	2	13.3%
Everest Vienna	21	2	9.5%
Everest Arlington	31	4	12.9%
Everest Aurora	50	3	6%
Everest Thornton	4	1	25%
Everest Chelsea	12	6	50%
Everest Brighton	12	7	58.3%
TOTAL	1277	231	18.1%

²⁰ BD150863.

²¹ BD152602.

²² BD155621.

²³ BD151128.

²⁴ BD151903.

WyoTech Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
WyoTech Laramie	31	8	25.8%
WyoTech Fremont	135	16	11.8%
WyoTech Blairsville	157	18	11.4%
WyoTech West Sacramento	132	22	16.6%
TOTAL	455	64	14.1%

Significantly, just as the aforementioned Heald, Everest, and WyoTech claims at each campus corroborate each other, the number of similar allegations at and across all Corinthian schools and campuses strongly suggests that promises of employment were endemic to Corinthian's institutional culture.

C. Guaranteed Employment Claims Consistent Across a Span of Years

Although the Borrower Defense Unit has received fewer claims from borrowers that attended Corinthian schools in earlier years,²⁵ such claims bear the same indicia of reliability as claims from students who attended more recently. Student statements about admissions representatives' misrepresentations are consistent across a span of years, as demonstrated by claims from former students at Everest – Orlando South:

- [1999]: "Everest recruiters told students that they were 'guaranteed' to obtain jobs."²⁶
- [2001]: "They . . . told me I would be guaranteed a job once I graduated."²⁷
- [2002]: "I was told I would get a job right away..."²⁸
- [2003]: "I was lured into this organization with false promises of 100% job placement..."²⁹
- [2005]: "They said I was guaranteed job placement after I graduated."³⁰
- [2006]: "Everest guaranteed me career placement upon graduation."³¹
- [2007]: "They told me that I will be guaranteed a job placement after I graduate."³²
- [2008]: "They told me I was guaranteed a job."³³
- [2009]: "I was promised job placement, high salaries and success."³⁴
- [2010]: "I was guaranteed a job from my Academic advisor and Career Counselor."³⁵
- [2011]: "...told me I was guaranteed a job in my profession after I graduated making twice as much as minimum wage at least."³⁶
- [2012]: "I was promised employment after graduation."³⁷

²⁵ The Department's outreach has targeted borrowers from more recent years in an attempt to reach borrowers that may be eligible for relief on the basis of misrepresented job placement rates.

²⁶ BD155177.

²⁷ BD156179.

²⁸ BD160004.

²⁹ BD151816.

³⁰ BD150148.

³¹ BD157758.

³² BD153166.

³³ BD153136.

³⁴ BD156038.

³⁵ BD1605002.

³⁶ BD155731.

³⁷ BD1615288.

- [2013]: “They called me over and over and promise jobs after graduating...”³⁸

D. Corinthian Employee Statements and Other Employment-Related Misrepresentations Corroborate Guaranteed Employment Claims

The similarity of student statements across schools, campuses, and years strongly suggests that the misrepresentations were system-wide and, indeed, part of Corinthian’s institutional culture. This conclusion finds further support in the affidavits of former employees, who admitted that Corinthian employees misled prospective students about their employment prospects. For example, a former instructor at Everest’s Chelsea campus stated, “People in corporate told prospective students they guaranteed jobs . . . They saw job placement not as job placement in the students’ fields of study, but as a student getting any job.”³⁹ An admissions representative from the same campus stated, “Admissions representatives told prospective students that medical assistants are in high-demand and that they would have no problem finding jobs . . . and they will definitely find jobs.”⁴⁰

Furthermore, guaranteeing jobs to prospective students appears to have been part of a pattern of employment-related misrepresentations at Corinthian. An internal Corinthian audit of admissions calls from one of its campuses found that that 21% of admissions representatives “provided [a] false or misleading statement (such as best case scenario),” which likely pertained to employment outcomes.⁴¹ Further, in a letter issuing a nearly \$30 million fine to Heald, the Department found that Heald “represented with regard to many of its programs that it placed 100% of its graduates in jobs,” but Heald was unable to provide evidence to substantiate these representations. The Department further noted that based on the evidence that Heald was able to provide, the job placement rates appeared to be substantially lower than 100%, and for several programs, below 50%.⁴² At the same time that Corinthian was making false representations about its job placement rates, executives at Corinthian were putting heavy pressure on campuses to attract new students. One admissions director reported that his superiors at Corinthian instructed him to “enroll your brains out.”⁴³ In this context, it is unsurprising that staff at the campus level would be guaranteeing students a job.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for additional Corinthian campuses. The hundreds of claims reviewed corroborate that Corinthian personnel made guaranteed employment representations beginning shortly after Corinthian opened or gained control of a campus.

II. Evidence of the Falsity of the Alleged Representations

Corinthian’s own records show that the school was unsuccessful at placing large numbers of Corinthian graduates. The Everest records, for example, reveal that nearly half of the school’s programs placed 50% or fewer of the program graduates. Further, evidence from Corinthian’s internal communications shows that they were aware that the school could not live up to their promises of employment. For example, an internal email from Corinthian’s Vice President for Operations stated that, “at some campuses” they had “not been

³⁸ BD1617088.

³⁹ *Massachusetts v. Corinthian Colleges, Inc.*, Civil Action 14-01093-E, *Medolo Aff.* ¶ 4, June 26, 2015.

⁴⁰ *Massachusetts v. Corinthian Colleges, Inc.*, Civil Action 14-01093-E, *Morrison Aff.* ¶ 5, July 6, 2015.

⁴¹ Exhibit 40 - CA AG Default Motion at 278.

⁴² Heald Fine Letter, <http://www2.ed.gov/documents/press-releases/heald-fine-action-placement-rate.pdf>.

⁴³ Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, Exhibit 36 - CA AG Default Motion.

consistently delivering” on the promise to students to “find a position that will help them launch a successful career.”⁴⁴

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations—and many other BD applicants—state that they were unable to find a job upon graduation; that they were unable to find employment that used their degree; or that they were forced to remain in the job that they had prior to enrolling at Heald, Everest, or WyoTech. In sum, the evidence overwhelmingly shows that Corinthian campuses could not truthfully guarantee prospective students employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for Borrowers Alleging Guaranteed Employment Misrepresentations Under Applicable State Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, the Corinthian borrowers’ applications for borrower defense relief predicated on a guaranteed employment allegation: a) are reviewed under California law; and b) have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”),⁴⁵ which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. Moreover, given the lack of value conferred by Corinthian credits and/or degrees, these students should be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department will apply California Law to These Claims.

To prevail with a defense to repayment, a borrower must assert acts or omissions “that would give rise to a cause of action against the school under applicable state law.”⁴⁶ With the assistance of the Office of General Counsel, we have examined specifically whether borrowers making the claims described in this memo could bring a cause of action in California and determined that they could. Specifically, the Department has concluded not only that students who were subjected in California to the acts complained of here would have been able to bring their cases in California courts under California law, but also that borrowers who attended Corinthian in other states could have brought their claims in the context of a class action in a California court, which would have applied California law.

California has general jurisdiction over Corinthian.⁴⁷ As to the law a California court would have applied, California courts have recognized that a forum state (such as California) “may apply its own substantive law to the claims of a nationwide class without violating the federal due process clause or full faith and credit clause if the state has a ‘significant contact or significant aggregation of contacts’ to the claims of each class member such that application of the forum law is ‘not arbitrary or unfair.’” *Washington Mut. Bank, F.A. v. Superior Court*, 15 P.3d 1071, 1080 (Cal. 2001) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985)). California is neither an arbitrary nor an unfair state for a class of Corinthian borrowers to bring a

⁴⁴ Exhibit 36 - CA AG Default Motion.

⁴⁵ CAL. BUS. & PROF. CODE § 17200, et seq.

⁴⁶ 24 C.F.R. § 685.206(c) (emphasis added).

⁴⁷ Corinthian was headquartered in California, and was therefore a resident corporation subject to the state’s general jurisdiction. Furthermore, even a non-resident corporation is subject to a forum’s general jurisdiction “if [its] contacts in the forum state are substantial[,] continuous and systematic.” *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1092 (Cal. 1996) (internal quotation marks and alterations omitted). In such a case, “defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction,” and there is no need to determine whether the specific acts alleged in the suit meet the threshold for specific jurisdiction. *Id.* Such is the case with Corinthian; the largest numbers of both campuses and students were located in California.

claim, and the conduct at issue had significant contacts with California insofar as the students were enrolling in a California-based school and recruiters were receiving at least some of their training from high levels of administration at the school.

Furthermore, under California's choice-of-law test, the court considers both the defendant's headquarters and the state where many students attended the school.⁴⁸ Another key factor in the choice-of-law analysis under California law is the location "where the wrong occurred."⁴⁹ At Corinthian, the largest numbers of both campuses and students were located in California. Further, as proved to be the case in the Department's investigation of Corinthian, the fact that a school is headquartered in a given state will often mean that "some or all of the challenged conduct emanates" from that state, another common factor in choice of law determinations.⁵⁰ At Corinthian, former employees report that corporate decision makers based in California directed admissions staff to make misleading statements and engage in various high-pressure sales tactics to increase enrollment.⁵¹

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, that the largest numbers of its campuses and students were located in California, and that decisions and policies made by its California based corporate leadership harmed students across the nation – it is reasonable for the Department to determine that a California court would apply California law to these claims. Therefore, BD claims submitted by former students from all Corinthian campuses will be considered under the California UCL.

B. Corinthian Students Making Guaranteed Employment Allegations Have A Valid Claim Under the "Unlawful" and "Fraudulent" Prongs of the UCL

California's UCL prohibits unfair competition, providing civil remedies for "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law]."⁵² Here, Corinthian's statements leading prospective students to believe that they were guaranteed employment constitute "unlawful" and "fraudulent" business practices under the UCL.

1. The Unlawful Prong

The UCL bars "anything that can properly be called a business practice and that at the same time is forbidden by law."⁵³ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁵⁴ Corporate

⁴⁸ See, e.g., *In re Clorox Consumer Litig.*, 894 F. Supp. 2d 1224, 1237–38 (N.D. Cal. 2012) (citing *In re Toyota Motor Corp.*, 785 F.Supp.2d 883, 917 (C.D.Cal.2011)) (considering, among other factors, "where the defendant does business [and] whether the defendant's principal offices are located in California...").

⁴⁹ *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir. 2012). See also *McCann v. Foster Wheeler LLC*, 225 P.3d 516, 534 (Cal. 2010) ("Although California no longer follows the old choice-of-law rule that generally called for application of the law of the jurisdiction in which a defendant's allegedly tortious conduct occurred without regard to the nature of the issue that was before the court, California choice-of-law cases nonetheless continue to recognize that a jurisdiction ordinarily has the predominant interest in regulating conduct that occurs within its borders." (internal citation and quotation marks omitted)).

⁵⁰ See, e.g., *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 612 (Ct. App. 1987).

⁵¹ See Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President. WI AG, Ex. 15; Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013).

⁵² CAL. BUS. & PROF. CODE §17204, *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

⁵³ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

misrepresentations like Corinthian's promises of employment are prohibited by a number of state and federal laws.⁵⁵ In particular, Corinthian's misrepresentation regarding its students' employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act").⁵⁶ Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."⁵⁷

Applying that three step inquiry, Corinthian clearly violated the FTC Act.

1. As described above, Corinthian made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁵⁸ Representations that students are guaranteed employment meet the FTC Act's materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that Corinthian schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student's evaluation of the school. Students enrolled "primarily to gain skills and find a position that will help them launch a successful career."⁵⁹ Corinthian's own marketing materials emphasized that the school was a pathway to employment, often noting "solid industry employment contacts"⁶⁰ and the availability of "lifetime career services." For many students, the principal purpose of attending a career college like

⁵⁴ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marina, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁵⁵ Though the analysis below focuses exclusively on the FTC Act, Corinthian's misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that Corinthian's conduct violates the FTC Act, this memo does not reach the issue of whether it may be unlawful under other applicable rules.

⁵⁶ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct.").

⁵⁷ *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁵⁸ *Novartis Corp.*, 127 F.T.R. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁵⁹ Exhibit 36 - CA AG Default Motion.

⁶⁰ Exhibit 179, Part I; Declaration of Jacinto P. Fernandez (CA AG), Exhibit Y

Everest, Heald or WyoTech was to obtain employment in a particular field.⁶¹ Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, Corinthian's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

2. The Fraudulent Prong

Corinthian's misrepresentations regarding employment prospects also are a fraudulent business practice under the UCL, and therefore are another form of unfair competition providing an independent basis for borrower defense relief for Corinthian students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁶² The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁶³ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁶⁴ As noted, the representations Corinthian made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.⁶⁵ However, for a consumer who was deceived into purchasing a product⁶⁶—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"⁶⁷ the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."⁶⁸

Express or implied claims like those made by Corinthian about employment prospects are presumptively material,⁶⁹ and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."⁷⁰ However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to

⁶¹ Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of claims making guaranteed employment allegations is a clear indication that students believed what they were told.

⁶² See *Bank of the West*, 2 Cal. 4th at 1254.

⁶³ Cal. Civ. C. § 1709.

⁶⁴ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁶⁵ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

⁶⁶ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁶⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁶⁸ *Id.* (internal quotation marks omitted).

⁶⁹ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333-JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

⁷⁰ *In re Tobacco II Cases*, 46 Cal. 4th at 298.

enroll.⁷¹ Statements by large numbers of borrowers across Corinthian campuses make clear that the promise of employment entered substantially into their choice to attend a Corinthian school.

C. Weak Disclaimers In Some of Everest and WyoTech's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

Corinthian's promises of employment were false and misleading, despite the limited disclaimers on some Everest and WyoTech enrollment agreements. Although those enrollment agreements state that the school does not guarantee "job placement" or "a salary," such written information did not change the overall impression created by the oral representations.

For example, if a student examined an Everest enrollment agreement, the student would have to read through two pages of fine print to find a box entitled "Enrollment Agreement" and subtitled "The Student Understands."⁷² Part of the way through that box of fine print, item number 2 states that Everest "does not guarantee job placement to graduates upon program / course completion or upon graduation, and does not guarantee a salary or salary range to graduates."⁷³ That item is not highlighted or bolded in any way. The agreement then continues on with an additional page of fine print disclaimers. The WyoTech enrollment agreement includes a similar disclaimer on its first page: "The school does not guarantee employment following graduation, but does offer placement assistance to graduates." This is included as item "(a)" in a list of nine fine print disclaimers following a paragraph-long disclaimer about the cost of books and tools.

These disclaimers do not cure the falsity of Everest and WyoTech's oral promises regarding employment prospects. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.⁷⁴ The California Supreme Court has also held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.⁷⁵

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, Corinthian's disclaimers were particularly ineffective when considered in the context of Corinthian's unsophisticated student population and high-pressure admissions practices.⁷⁶

Corinthian documents show that the school sought to enroll vulnerable people who had "low self-esteem," were "stuck, unable to see and plan well for the future" and "isolated," had "few people in their lives who care about them," and were "impatient, want[ed] quick solutions."⁷⁷ Corinthian's CEO, in a letter to

⁷¹ Because deception occurs at the time of decision, or for Everest students, at the time of enrollment, it is sufficient for Everest students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

⁷² See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

⁷³ BD150633, Attachment #3, page 7.

⁷⁴ See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype's oral representation that a calling plan was "unlimited" was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

⁷⁵ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1979) ("the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.")

⁷⁶ The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics.

⁷⁷ CA AG Quach Decl. Ex 113.

Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”⁷⁸ Corinthian advertised on daytime TV,⁷⁹ targeting the un- or under-employed. In some instances, Corinthian personnel actively recruited homeless individuals as students, despite the additional challenges they would face in completing their studies, even offering monetary incentives to take campus tours.⁸⁰ In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Finally, the fact that the 436 Corinthian claims reviewed to date that allege Corinthian guaranteed employment make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population Corinthian targeted, and the high pressure sales tactics and oral representations that Corinthian personnel employed, these disclaimers do not offset the net impression of the school’s misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following Corinthian students making guaranteed jobs allegations should be eligible for relief: any claimant who attended a Corinthian campus and who alleges that they were promised, guaranteed, or otherwise assured employment or job placement.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis, the misrepresentation in this case went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower’s ultimate ability to secure employment. Furthermore, in this case, the Department’s review of the borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act.⁸¹ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.⁸²

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital*

⁷⁸ Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

⁷⁹ CA AG Quach Decl. Ex 113.

⁸⁰ CA AG Decl. of Holly Harsh.

⁸¹ See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

⁸² See, e.g., *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices.”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-cv-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.⁸³

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Corinthian education. *See Makoeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). The Department has found that Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its accreditation.⁸⁴ Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest, Heald or WyoTech education has been severely limited.

Borrower defense applications confirm the lack of value of a Corinthian education as many Corinthian students report that their degree or affiliation with the school has been an impediment rather than an asset as they seek employment. For example, one Everest student reports: “I was only working part time when I was attending school and this degree has done nothing to help me obtain better employment. I am also embarrassed to even put this on my resume because any potential employer who looks this school will discover it was a fraud.”⁸⁵ Another reports: “I cannot find a job using my degree. I find one faster if I leave the fact that I didn’t go to college at all. People just laugh in my face about Everest saying that it is not a ‘real school.’”⁸⁶ A student from WyoTech states: “Any association with WyoTech hurts my chances for employment. I was promised jobs with big salaries, a career I would hold for life and all WyoTech gave me was debt and shame. I was told by two interviewers, that they would NEVER hire a WyoTech graduate...”⁸⁷ And a Heald student states: “The school is not reputable no other institution recognizes the credits earned and jobs stray away from Heald graduates, claiming they lack in teaching students current and up to date information in the coding industry. I have yet to work in my field of study and utilize my degree. I have a useless degree from a closed college.”⁸⁸

Finally, awarding full relief to students who make guaranteed employment allegations is consistent with the Department’s approach to providing relief to Corinthian students seeking BD relief on the basis of false job placement rates. Indeed, the Department granted full relief to students who alleged that they relied on Corinthian job placement rate representations, without offsetting the relief based on any value that students may have received by attending Corinthian. Given the Department’s approach to date, it would be inconsistent to limit the relief of students who make guaranteed employment allegations—which are essentially 100% job placement claims—while providing full relief to those students who qualify for job placement rate relief.

⁸³ *Makoeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

⁸⁴ See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); see also Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that “Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur” and that the school’s job placement rates were based on “CORINTHIAN-designed programs through which Everest Decatur paid employers to hire its graduates” for short time periods in order to inflate placement rates).

⁸⁵ BD1614100.

⁸⁶ BD1602593.

⁸⁷ BD151191.

⁸⁸ BD157356.

In sum, in these circumstances, and consistent with the Department's prior actions related to Corinthian,⁸⁹ it is appropriate to award eligible borrowers full relief, subject to reduction for borrowers affected by the statute of limitations.

CONCUR:

John C. DiPawlo
Office of the General Counsel

1/12/17
Date

⁸⁹ This approach also is consistent with the Department's new regulations in that the Department has considered whether the value of the education provided by Corinthian was such that it would be appropriate to offset the relief provided to borrowers who were guaranteed employment. The Department has concluded that the Corinthian education lacked sufficient value to do so.

To: Under Secretary Ted Mitchell
 From: Borrower Defense Unit
 Date: January 10, 2017
 Re: Recommendation for ITT Borrowers Alleging That They Were Guaranteed Employment -- California Students

ITT Technical Institute ("ITT") consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. This memorandum addresses borrower defense (BD) claims premised on these misrepresentations submitted by borrowers who attended an ITT campus in California.¹ As set forth below, the Borrower Defense Unit recommends full relief (subject to the statute of limitations) for borrowers² who (1) enrolled at any ITT California campus between January 1, 2005³ and ITT's closing and (2) whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including representations that all graduates obtain employment.

I. Summary of ITT's Representations to Borrowers Promising Employment

Like former Corinthian students,⁴ former ITT students have submitted guaranteed employment claims that are factually consistent, pervasive across campuses, and constant over a span of years. In these BD applications, ITT borrowers (both from California and throughout the country) consistently allege, each in their own words,⁵ that ITT staff promised, guaranteed, or otherwise assured that they would be placed in jobs. These oral representations occurred both in person and during phone calls with prospective students. The Department has received guaranteed employment claims from borrowers at every campus sampled, dating back to the 1990s. Based on those statements, as well as corroborating evidence from former ITT employees, a preponderance of the evidence demonstrates that ITT guaranteed or otherwise assured borrowers future job placement.⁶

¹ As discussed below, guaranteed jobs misrepresentations were evident throughout ITT's campuses nationwide. Because California law has already been thoroughly analyzed by the Department for the same claim in connection with Corinthian Colleges, we recommend proceeding with discharges for ITT California students with guaranteed jobs allegations, as set forth below.

² For purposes of this memorandum, Parent PLUS borrowers are included in the definition of California students.

³ Although this memorandum only addresses borrowers who enrolled on or after January 1, 2005, additional evidence (including from additional BD claims) may support future relief for applicants who enrolled prior to 2005. The Department will evaluate this evidence on an ongoing basis and may update this recommendation accordingly.

⁴ See Memorandum from Borrower Defense Unit to Under Secretary Mitchell re: Corinthian Borrowers Alleging That They Were Guaranteed Employment (Jan. 9, 2017).

⁵ The Department has received ITT BD applications submitted via narratives in Word documents and emails, as well as via forms provided to borrowers by the Debt Collective. A vast majority of these allegations are unprompted. Some versions of the Debt Collective form ask about "false and misleading conduct relating to job prospects," but the Department's BD website has only instructed borrowers to provide "other information...that you think is relevant."

⁶ We have reviewed the ITT evidence on a nationwide level as well as on a California-specific level. As set forth below, ITT's conduct with respect to guaranteed jobs was consistent nationwide; we have found nothing unique about ITT's conduct in California as compared to other states. Thus, the fact section addresses both California-specific evidence as well as nationwide evidence.

A. Guaranteed Employment Representations Consistent in Nature

Of 320 randomly sampled BD applications submitted by ITT borrowers, 103 (32% of the total) state that the borrower was promised, guaranteed, or otherwise assured employment.⁷ The unprompted factual similarity of these BD claims evidence a strong indicia of reliability. For example, at ITT-San Diego, where 7 of 19 BD applications sampled alleged guaranteed employment, borrowers submitted the following highly consistent statements:

- "The school assured me that I would find employment in my field of study and that the industry of my field of study was in high demand."⁸
- "I was also told by the recruiters from the school about wages I could make that I have yet to be able to earn due to the fact that the school is and was not very credible. . . . The ITT Tech recruiters assured me A.A. students graduate making around 50-60K a year and the B.S. graduates would be around \$80k a year. They misrepresented their product, their name brand and their education."⁹
- "The promises were that it would be easy to find a high paying job right away."¹⁰
- "I was promised that once I graduated I would be able to get into any field of my choice from Crime Scene Investigator, Crime Mapping, Probation to Detective to many many more. The promise of salaries starting at 50K upward depending on my field of choice and my recruiter said employers are beating down their door saying we want to hire the graduates as they know the latest and the best information available."¹¹
- "They promised to place me into a good job making a middle class wage but were unable to put myself or other students into anything but a low paying temp job. Then it was promised that I would be better off with a Bachelors from ITT in order to get the higher pay job. I and multiple other students were duped into thinking that."¹²
- "They additionally gave promises of placement in good jobs, while in reality I have been swamped with a large amount of debt, inability to attain a job in the degree field or of even better earnings."¹³
- "I was also told that they have a great job placement program and that all students that seek help would be placed with a job within my new field after the first six months of school."¹⁴

B. Guaranteed Employment Representations Pervasive Throughout ITT

Guaranteed employment representations were not limited to ITT-San Diego. In fact, such representations were pervasive throughout ITT's network of campuses in California and nationwide. Former students alleged guaranteed employment at each of the 22 ITT campuses sampled, which were located across 17 states (CA, IL, MI, PA, WA, AK, VA, MO, FL, NM, TX, OR, TN, AL, NY, OK, and WI). A sample of these claims, detailed below, demonstrates the pervasiveness of guaranteed employment misrepresentations throughout ITT:

⁷ This total excludes allegations that may pertain to guaranteed jobs but were not sufficiently specific to qualify for relief. For example, allegations that ITT's career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment claims.

⁸ BD1655184.

⁹ BD1639392.

¹⁰ BD1655377.

¹¹ BD1605233.

¹² BD1655410.

¹³ BD1655354.

¹⁴ BD1638087.

- ITT-Orange (CA): "I was told that ITT had a 100% job placement upon graduating students."¹⁵
- ITT-Anaheim (CA): "I was promised that immediately after graduating, I would be placed in a job within my field of study."¹⁶
- ITT-Sylmar (CA): "I was told that my degree would guarantee me employment."¹⁷
- ITT-Rancho Cordova (CA): "The sales representative stated that after completion of my education courses I would make between \$50,000 and \$75,000 USD per year."¹⁸
- ITT-Oak Brook (IL): "They advised me that I would have a job waiting for me. The credits for the field I was in were not accredited. The degree is not worth anything and the school is a scam."¹⁹
- ITT-Swartz Creek (MI): "They guarantee jobs right after graduating."²⁰
- ITT-Harrisburg (PA): "I was told on several occasions by ITT Admissions Representatives that the school has 100% job placement upon completion for students."²¹
- ITT-Seattle (WA): "They said that 100% job placement and that I should have no problem finding a job in my field."²²
- ITT-Little Rock (AK): "They promised that they had companies like Blizzard Entertainment, Electronic Arts, Sony, Nintendo, etc. fighting for graduates for their companies . . . They not only lied about the job placement but they lied about the fact that we could be making a 5 figure salary."²³
- ITT-Springfield (VA): "I WAS LED BY THE RECRUITER TO BELIEVE THAT THE JOB OPPORTUNITIES WOULD BE POURING IN."²⁴
- ITT-Arnold (MO): "I was told that I would get a job in my field."²⁵
- ITT-Albuquerque (NM): "ITT lied about job prospects and guaranteed a job after graduation."²⁶
- ITT-Richardson (TX): "After the tour ended, the counselor told me the multimedia program was game development and stated that upon completion of the program I would have a guaranteed job through their job placement program and that the starting base pay for such a job was \$70,000/year."²⁷
- ITT-Portland (OR): "Told me they would have me in a career by the end of my first year in school."²⁸
- ITT-Knoxville (TN): "I was told that they had 100's of jobs waiting for only their graduates. No one but ITT Tech graduates could apply to these jobs."²⁹
- ITT-Bessemer (AL): "I was promised job placement upon completing my courses . . . I was also given an estimated range of amount of starting salary/hourly pay."³⁰
- ITT-Greenfield (WI): "They also provided misleading stories about how their program would land me the job of tomorrow and how much people in my field were being paid during and after graduation."³¹
- ITT-Tulsa (OK): "They said they would have me working in the gaming industry....they told me to look in the classifieds."³²

¹⁵ BD156693.

¹⁶ BD1651614.

¹⁷ BD1639208.

¹⁸ BD1601288.

¹⁹ BD156627.

²⁰ BD153161.

²¹ BD156697.

²² BD1600120.

²³ BD153747.

²⁴ BD155274.

²⁵ BD1659434.

²⁶ BD1604365.

²⁷ BD1659402.

²⁸ BD1607247.

²⁹ BD1619298.

³⁰ BD1655120.

³¹ BD1604587.

ITT Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
San Diego (CA)	19	7	42.11%
Anaheim (CA)	10	4	40.00%
Rancho Cordova (CA)	15	2	13.33%
Sylmar (CA)	16	2	12.5%
Dayton (OH)	12	5	41.66%
Arnold (MO)	23	6	26.09%
Greenfield (WI)	17	6	35.29%
Knoxville (TN)	18	5	27.78%
Portland (OR)	14	2	14.29%
Richardson (TX)	15	3	20.00%
Spokane Valley (WA)	30	10	33.33%
Tampa (FL)	17	4	23.53%
Arlington Heights (IL)	11	3	27.27%
Getzville (NY)	10	1	10%
Albuquerque (NM)	9	3	33.33%
Various Campuses ³²	84	39	46.43%
TOTAL	320	102	31.90%

Moreover, BD applications alleging guaranteed employment are buttressed by numerous borrower statements in connection with government investigations and private litigation, as well as statements provided to the Borrower Defense Unit by veterans targeted by ITT for enrollment.³⁴

C. Guaranteed Employment Representations Constant Across Years

Guaranteed employment representations also are constant across a span of years. Importantly, the claims of borrowers who attended in earlier years are consistent with claims submitted by students who attended more recently. Just as the claims sampled at each campus corroborate each other, the following allegations over time strongly suggest that representations of guaranteed employment were endemic at ITT:

- [2005]: "Promised great jobs and prosperous careers . . ."³⁵

³² BD153174.

³³ This number includes a random sample of 84 claims from 22 campuses across 18 states.

³⁴ In response to government investigations, ITT borrowers consistently alleged that they were "guaranteed to get a job," *Consumer Financial Protection Bureau v. ITT Educational Services, Inc.*, Civil Action 14-00292-SEB-TAB (S.D. Ind.) (hereinafter "*CFPB Case*"), Declaration of MT at ¶ 3 (July 11, 2016); that they would be placed in "jobs in their field of study within nine months of graduating," *Commonwealth of Massachusetts v. ITT Educational Services, Inc.*, Civil Action 16-0411 (Mass. Sup. Ct. Compl. at ¶ 55, filed Mar. 31, 2016) (hereinafter "*MA AG Case*"); and that "recruiters guarantee ITT will find you a job," S. Health, Educ., Labor & Pensions Comm., *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (2012) (hereinafter "*Harkin Report*"), p. 539, available at https://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf. These statements are corroborated by 90 allegations of guaranteed employment cited in a recent class action filed by the Harvard Legal Services Center, *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-74)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), as well as by dozens of guaranteed employment allegations submitted by veterans who attended ITT, *Veterans Education Success*, "ITT Trends" (2016) (compiling summaries of interviews and student quotations) (on file) (hereinafter "*ITT Trends*").

³⁵ BD156898 (ITT Torrance).

- [2006]: “I was told that I would be able to make about 64K once I graduated because I was going into a Bachelors program degree. I got promised the stars and the sky.”³⁶
- [2007]: “I was also led to believe that what I was going to school for would be a sure job after graduation.”³⁷
- [2009]: “I was told that I would definitely have a job if I enrolled.”³⁸
- [2011]: “We were told that there would be no problem getting a job and they would help.”³⁹
- [2013]: “I was told I would obtain a job in the field upon graduation, easily with a high salary.”⁴⁰

As further discussed below, these claims are supported by corroborating evidence from former employees and spanning the period of at least 2005 to the school’s closure.

D. Statements of Former ITT Employees Corroborate Guaranteed Employment Claims

ITT borrower defense claims based on guaranteed employment misrepresentations are substantiated by the affidavits, interviews, and testimony of former employees at campuses nationwide. This former employee evidence establishes that, in response to oral directives from management, recruiters from at least 2005 through ITT’s closing led prospective students to believe that employment was guaranteed.

ITT orally directed staff to present recruitment documents in a manner that guaranteed or otherwise assured employment. ITT employees were trained to provide these oral promises of employment despite the existence of written documents to the contrary.⁴¹ For example, one former employee explained that “[w]ritten instruction from ITT headquarters was contradicted by oral instructions from the District Manager or a Senior Vice President . . . [ITT] was interested in getting students into the school no matter what it took to do so.”⁴² Another former employee, in testimony before the National Advisory Committee on Institutional Quality and Integrity (NACIQI), explained that recruiters “were consistently trained . . . to go verbally around the requirements” and that, even if recruiters did not expressly guarantee employment, “it was taken that way.”⁴³

As a result, former employees at ITT consistently report that staff guaranteed or otherwise assured employment. Some employees guaranteed employment expressly. For example, one former employee stated, “[m]arketing told students not to worry about prior felonies and they would get placed in jobs.”⁴⁴ Another stated, “I heard recruiters assure students that they would get a great job that would enable them to pay back

³⁶ BD156228 (ITT-Sylmar).

³⁷ BD1659496 (ITT-Rancho Cordova).

³⁸ BD157549 (ITT-Indianapolis).

³⁹ BD156506 (ITT-Swartz Creek).

⁴⁰ BD154555 (ITT-Murray).

⁴¹ *State of New Mexico v. ITT Educational Services, Inc.*, Civil Action D-202-CV-2014 (D.N.M.) (hereinafter “*NM AG Case*”), ITT Training Document entitled “The Importance of our Language: Comments to Avoid,” dated July 18, 2011, ITT-NMAG 0006448 (Feb. 26, 2014) (explaining that ITT disseminated a document on “Comments to Avoid,” which barred personnel from promising job placement and stated, “[w]e do not guarantee jobs to any student or graduate”).

⁴² *CFPB Case*, Interview of Wendy Maddox-Wright, former employee from April 2005 to August 2011, ITT-Louisville (Jan. 28, 2014). See also *id.*, Interview of Amy St. Clair Lachman, former employee, ITT-Johnson City (April 9, 2014) (“[E]mployees knew what ITT wanted and it was not about helping people. Rather, it was about how many people ITT could get into a chair.”).

⁴³ Transcript of Testimony of ITT Recruiter Matthew Mitchell before NACIQI at 217 (June 23, 2016) (Mitchell was employed as a recruiter in 2013).

⁴⁴ *CFPB Case*, Interview of former employee Sarah Doggett (employed from late 2005 to 2009) at 6 (ITT-Louisville, Feb. 26, 2014).

their loans.”⁴⁵ And another explained that “[b]efore showing any forms or numbers to students, financial aid staff was trained to emphasize all of the benefits students would receive from their education. From 2004 to 2007, this was done with the guidance of a ‘return on investment document’ that [the President and CEO of ITT] developed” which “contained misleading information about the average salaries of graduates of different programs.”⁴⁶

Recruiters, under pressure to enroll students, used a variety of tactics to pave the way for these false employment promises, including presenting documents in a manner that led students to believe employment was assured. A review of ITT’s internal “Mystery Shopper” audio files corroborated testimony that recruiters deceived prospective students with a “wink and a nod.” In one recording, for example, a recruiter displayed a “Career Wheel” and reassured the borrower regarding his chances of landing one of the entry level jobs listed: “As long as you have the foundation to be able to go in there and experience some of this, you’ll be good to go.”⁴⁷

Guaranteed employment claims are further corroborated by recent ACICS findings against ITT⁴⁸ as well as by numerous former employee statements regarding falsification of student documents and manipulation of job placement statistics.⁴⁹ Based on the widespread evidence cited herein that ITT guaranteed or otherwise assured employment to its prospective students during the period of 2005 until the school’s closure in 2016, we recommend no further year-by-year or campus-by-campus breakdown for additional ITT campuses.

II. Evidence of the Falsity of the Alleged Representations

ITT’s own records show that for the students who managed to graduate, the school was unsuccessful at placing thousands of them. Moreover, former employee statements show the school knew it could not live up to its employment promises. For example, according to a former employee from ITT-Louisville, marketing representatives told prospective students that they could get jobs creating PlayStation games with a certain Bachelor’s degree; however, not a single student with the degree obtained employment.⁵⁰ Another former

⁴⁵ *CFPB Case*, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁴⁶ *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), Affidavit of Dawn Lueck (Dec. 20, 2016) Lueck began working at ITT’s Henderson, Nevada, campus in 1999. In 2002, she began working at ITT’s corporate office in Carmel, Indiana, as a student loan refund coordinator. In 2003, she moved to ITT’s Murray, Utah campus, where she began working as a financial aid administrator, and was promoted to director of finance in 2006. In 2007, she moved to ITT’s new Phoenix, Arizona campus to set up their financial aid department, and was employed there until she left ITT in 2009.

⁴⁷ *Audiotape: ITT Mystery Shopper Investigation*, ITDS0000009 at 30 mins (Nov. 21, 2012) (on file).

⁴⁸ ACICS found that ITT violated its requirements for reporting job placements rates. See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016), available at <http://acics.org/commission%20actions/content.aspx?id=6712>.

⁴⁹ *CFPB Case*, Interview of former employee Bradley Parrish, ITT-Knoxville (April 23, 2014) (explaining that some graduate employment verification forms, or GEI’s, “had been falsified and student signatures had been fabricated . . . These were called ‘magic GEI’s’ because magic tape was used to either transfer a student signature from another form to the GEI or to have the student sign a blank GEI”); *CFPB Case*, Complaint at ¶ 33 (alleging that “placement rates do not include former students who did not graduate . . . may include jobs that do not require the degrees students paid for . . . and may include positions that were merely seasonal”); *City of Austin Police Ret. Sys. v. ITT Educ. Servs., Inc.*, 388 F. Supp. 2d 932, 938 (S.D. Ind. 2005) (former ITT employee who worked as a mater admissions representative at ITT-San Bernardino (CA) allegedly “concealed adverse student statistics by switching students from program to program”); *id.* (former ITT employee from the Torrance, California Campus stated that ITT fabricated and stretched its student statistics and that ITT’s graduate placement figures were inaccurate by at least 20%).

⁵⁰ *CFPB Case*, Interview of former employee Sarah Doggett, ITT-Louisville (Feb. 26, 2014) (employed from late 2005 to 2009).

employee, who served as the Dean of Academic Affairs at ITT-Tallahassee, stated that recruiters asked prospective students if they were familiar with the show “CSI Miami” and then guaranteed future employment as crime scene investigators, even though he was “not aware of a single student who graduated from the Criminal Justice program and became a CSI.”⁵¹ Instead, most of those students became security guards – “positions that didn’t require a degree at all.”⁵²

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations – and many other ITT BD applicants – state that they were unable to find a job at graduation; that they were unable to find employment that used their degree; and/or that they were forced to remain in a job that they had prior to enrolling at ITT.⁵³ These narratives are consistent with student accounts provided to law enforcement agencies⁵⁴ and non-profit organizations regarding their inability to find employment related to their fields of study.⁵⁵ In sum, the evidence overwhelmingly shows that ITT could not truthfully guarantee employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for California Students Making Guaranteed Employment BD Claims Under California Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, California students with borrower defense claims predicated on a guaranteed employment allegation have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”),⁵⁶ which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations.⁵⁷

Moreover, California students with guaranteed employment allegations should, under California law, be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department Will Apply California Law to Claims by California Students

The Higher Education Act directs the Secretary, “[n]otwithstanding any other provision of State or Federal law,” to “specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a [Direct] loan, except that in no event may a borrower recover from

⁵¹ *CFPB Case*, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁵² *Id.*

⁵³ See *supra*, Section I and *infra* Section III(E).

⁵⁴ *CFPB Case*, Complaint at ¶¶ 36-49 (providing that numerous students complained that ITT promised better results than they were able to achieve and that ITT misled potential students through job placement rates which inappropriately included temporary work); *Id.* Declaration of Jacy Belyeu at ¶ 8 (ITT-Tucson July 14, 2016) (stating that “[i]n the three years since I graduated, my ITT degree hasn’t increased my pay of my job opportunities as promised”); *Id.* Declaration of Michael Tolliver at ¶ 10 (ITT-Chattanooga, July 11, 2016) (stating that since graduating, the “degree has been worthless to me. I have applied for hundreds of jobs in the IT field and I haven’t been hired in the field. The job opportunities the recruiter talked about have not been available as he promised”).

⁵⁵ See *ITT Trends* (providing dozens of statements by veteran borrowers attending California campuses, as well as campuses nationwide, that ITT promised them jobs upon graduation).

⁵⁶ CAL. BUS. & PROF. CODE § 17200.

⁵⁷ Although we elected to review applications of borrowers attending California campuses based on California law, see *supra* note 1, we note that claims by such borrowers may also be reviewed under Indiana law, the location of ITT’s corporate headquarters. Indiana law would support relief for guaranteed jobs claims under the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a) *et seq.*, as well as under the Indiana common law theory of constructive fraud, *Rice v. Strunk*, 670 N.E.2d 1280, 1284 (Ind. 1996); *Harmon v. Fisher*, 56 N.E.3d 95, 100 (Ind. App. 2016).

the Secretary, in any action arising from or relating to a [Direct] loan..., an amount in excess of the amount such borrower has repaid on such loan.”⁵⁸ The current borrower defense regulation states that “the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”⁵⁹

At the time of its closing, there were more ITT students *and* campuses in California than in any other state.⁶⁰ ITT was incorporated in Delaware but operated no campuses there. ITT’s corporate headquarters were located in Indiana, but at the time of closing fewer than 3% of its students were Indiana residents, a smaller number of residents than each of the following eleven states (in order from most to least)—California, Texas, Florida, Ohio, Virginia, Pennsylvania, Michigan, Georgia, Tennessee, North Carolina and Alabama.

Here, the Department has determined that it is appropriate to apply California law to claims by California students. This approach is reasonable and consistent with common state choice-of-law analyses, which look primarily to the location of the wrong (and only secondarily to the place of incorporation or location of corporate headquarters). Indeed, the key factor in the choice-of-law analysis under California law,⁶¹ Indiana law,⁶² and the Restatement (2nd) of Conflict of Laws is the location “where the wrong occurred.”⁶³ Accordingly, because the wrong for California students occurred in California, it is reasonable for the Department to determine that a California court would apply California law in addressing the claims of ITT’s California students.

B. California Students Making Guaranteed Employment Allegations Have A Valid Claim Under the “Unlawful” and “Fraudulent” Prongs of the California UCL

California’s UCL prohibits unfair competition, providing civil remedies for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”⁶⁴ Here, ITT’s statements leading prospective students to believe that they were guaranteed employment constitute “unlawful” and “fraudulent” business practices under the UCL.

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.”⁶⁵ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁶⁶ Corporate

⁵⁸ 20 USC § 1087e(h).

⁵⁹ 34 C.F.R. § 685.206(c)(1).

⁶⁰ At the time of closing, ITT operated fourteen campuses in California. No other state operated more than nine. Similarly, ITT enrolled 4,482 California residents, over 1,100 more than Texas, the state with the second largest student population.

⁶¹ *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir. 2012). See also *Hernandez v. Burger*, 102 Cal.App.3d 795, 802, 162 Cal. Rptr. 564 (1980), cited with approval by *Abogados v. AT & T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000) (holding that the state with “the predominant interest” is the state “where the wrong occurred.”)

⁶² Indiana treats a consumer protection claim as recovery in tort. See *McKinney v. State*, 693 N.E.2d 65, 72 (Ind. 1998) (finding that, despite the fact that “fraud is not an element of” an IDCSA claim, “the action is nonetheless based on fraud”). Under Indiana law, the choice-of-law rule governing tort actions is *lex loci delicti*—“the law of the place where the tort was committed is the law of the resulting litigation.” *Eby v. York-Div., Borg-Warner*, 455 N.E.2d 623, 626 (Ind. Ct. App. 1983).

⁶³ Restatement (Second) of Conflict of Laws § 145 (1971) (“Subject only to rare exceptions, the local law of the state where conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor’s conduct was entitled to legal protection.”).

⁶⁴ CAL. BUS. & PROF. CODE § 17204, *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

⁶⁵ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

misrepresentations like ITT's promises of employment are prohibited by a number of state and federal laws.⁶⁷ In particular, ITT's misrepresentation regarding its student's employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act").⁶⁸ Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."⁶⁹

Applying that three step inquiry, ITT clearly violated the FTC Act.

1. As described above, ITT made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁷⁰ Representations that students are guaranteed employment meet the FTC Act's materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that ITT schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student's evaluation of the school. Indeed, for many students, the principal purpose of attending a career college like ITT was to obtain employment in a particular field.⁷¹ Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, ITT's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

⁶⁶ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁶⁷ Though the analysis below focuses exclusively on the FTC Act, ITT's misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that ITT's conduct violates the FTC Act, this memorandum does not reach the issue of whether it may be unlawful under other applicable rules.

⁶⁸ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

⁶⁹ *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁷⁰ *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁷¹ Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of ITT claims making guaranteed employment allegations is a clear indication that students believed what they were told.

2. The Fraudulent Prong

ITT's misrepresentations regarding employment prospects are also a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for ITT students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁷² The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁷³ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁷⁴ As noted, the representations ITT made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and . . . lost money or property" as a result of the deceptive practice alleged.⁷⁵ However, for a consumer who was deceived into purchasing a product⁷⁶—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing" the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."⁷⁸

Express or implied claims like those made by ITT about employment prospects are presumptively material,⁷⁹ and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."⁸⁰ However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to enroll.⁸¹ Statements by large numbers of borrowers across ITT campuses make clear that the promise of employment entered substantially into their choice to attend ITT.

C. Weak Disclaimers In Some of ITT's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

ITT's promises of employment were false and misleading, despite the limited, fine print disclaimers on some enrollment agreements that the school does not guarantee "job placement" or "a salary." As set forth

⁷² See *Bank of the West*, 2 Cal. 4th at 1254.

⁷³ Cal. Civ. C. §1709.

⁷⁴ *Boachina v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁷⁵ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

⁷⁶ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁷⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁷⁸ *Id.* (internal quotation marks omitted).

⁷⁹ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

⁸⁰ *In re Tobacco II Cases*, 46 Cal. 4th at 298.

⁸¹ Because deception occurs at the time of decision, it is sufficient for ITT students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

below, these fine print disclaimers do not change the overall impression created by the oral representations described above.

For example, if a student examined an ITT enrollment agreement, the student would have to read through two pages of fine print to find a list of twenty-eight fine print disclaimers, the eleventh of which states that ITT "does not represent, promise or guarantee that Student or any other student will obtain employment."⁸² This disclaimer is not highlighted or bolded in any way. The agreement then continues on with four more pages of fine print.

These disclaimers do not cure the falsity of ITT's oral promises regarding employment prospects. Courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.⁸³ The California Supreme Court also has held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.⁸⁴

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, ITT's disclaimers were particularly ineffective when considered in the context of its unsophisticated student population and high-pressure admissions practices.⁸⁵ Indeed, there is evidence that some ITT students were not afforded the opportunity to even review the enrollment agreement prior to enrollment and that admission representatives would go so far as to e-sign enrollment paperwork on behalf of students, without their consent.⁸⁶ Moreover, as with Corinthian, ITT advertised heavily on daytime TV, targeting the un- or under-employed. Indeed, admissions representatives were under such tremendous pressure to enroll new students that even homeless veterans were recruited despite the additional challenges

⁸² See, e.g., ITT Albuquerque Enrollment Agreement (September 1, 2011) (on file).

⁸³ See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype's oral representation that a calling plan was "unlimited" was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

⁸⁴ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) ("[T]he fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.").

⁸⁵ The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics. ITT's high pressure enrollment tactics are described in detail by numerous sources. See, e.g., Harkin Report at 527-531; *CFPB Case*, Complaint at ¶¶64-66 ("In contrast to the lengthy sales pitch, the enrollment and financial aid processes were much faster, so that many consumers did not know or did not understand what they signed up for. Recruiters induced prospective students to sign forms without giving them sufficient information about what they were signing [and] required potential students to sign an Enrollment Agreement before they could receive information about their financial aid options . . .").

⁸⁶ *CFPB Case*, Affidavit of former admissions representative Ricky Bueche at ¶ 15 (ITT-Baton Rouge, 2010-2014) (explaining that "[m]any times, when students left the campus without agreeing to apply, the Director of Admissions would instruct representatives to go back to the computer to e-sign on behalf of the students to apply to ITT, without the students being present and without the students' knowledge or agreement"); *Villalba Compl.* at Ex. 19, Student Statement 14 ("First and foremost I never physically signed an enrollment agreement (I have a copy). The recruiter signed for myself and my dad via computer, and because of this dishonest tactic my dad is on the hook for a parent plus loan."); *Id.* at Student Statement 49 ("There are MANY instances that I have found on all the enrollment paperwork (that I have since gotten copies of) where my signature/initials were forged, and not in my handwriting. There were many things that weren't explained to me AT ALL, where I was told to 'sign' electronically.").

they would face in completing their studies.⁸⁷ In sum, the net impression of the oral misrepresentations on the typical ITT student likely would not have been altered by buried written disclosures.

Finally, the fact that the ITT guaranteed employment claims reviewed to date make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population ITT targeted, and the high pressure sales tactics and oral representations that ITT personnel employed, these disclaimers do not offset the net impression of the school's misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following ITT students should be eligible for relief: any BD claimant who enrolled at an ITT campus in California on or after January 1, 2005 and whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including those told that all graduates obtain employment.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis for Corinthian, the type of misrepresentation at issue here went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower's ultimate ability to secure employment. Furthermore, in this case, the Department's review of borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, California courts rely on cases interpreting the Federal Trade Commission Act.⁸⁸ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.⁸⁹

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital*

⁸⁷ *CFPB Case*, Affidavit of former admissions representative Pearl Gardner at ¶¶ 11-12 (ITT-Atlanta South, 2008-2014) ("There was enormous pressure on me and the other representatives and financial aid coordinators ('FACS') to make sales calls, enroll students, complete financial aid packages, and get students to attend an ITT class. This pressure was relentless . . . To solicit interest in ITT programs, I would go to job fairs, workforce events, and Stand Down events for homeless veterans (events where homeless veterans are given supplies and services, such as food, clothing, shelter, health screenings, and other assistance)."); see also *CFPB Case*, Complaint at ¶¶ 55-84 (summarizing mystery shopper evidence related to high pressure sales tactics).

⁸⁸ See, e.g., *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

⁸⁹ See, e.g., *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include "the full amount lost by consumers rather than limiting damages to a defendant's profits"); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) ("The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices."); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) ("restoration of the victims of [defendant's] con game to the status quo ante" by use of defendant's gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.⁹⁰

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value provided by ITT.⁹¹ The facts described above closely resemble those relating to Corinthian Colleges, where the Department determined that borrowers should receive full relief. That determination was based in substantial part on the lack of value attendant to a Corinthian education, as evidenced by:

- Repeated misleading statements to students, regulators and accreditors;
- Elaborate job placement fraud; and
- Many student accounts stating that their affiliation with the school was an impediment rather than an asset as they sought employment.

Given such pervasive and highly publicized misconduct, the Department determined that the value of the education provided by Corinthian was severely limited.

ITT’s conduct was as flagrant as Corinthian’s. Hundreds of unprompted student statements confirm the lack of value of an ITT education, as ITT students time and again report that their education was sub-standard and that their degree or affiliation with the school was an impediment rather than an asset as they sought employment. These include numerous statements in BD claims,⁹² statements to VES,⁹³ and over 500 statements attached to the *Villalba* Class Action Complaint.⁹⁴

Furthermore, the ITT “brand” became severely tarnished in the lead-up to and wake of its collapse. Over the past several years, ITT has been the subject of a steady stream of federal, state, and private lawsuits and investigations detailing misleading statements to students regarding (among other things) placement rates, employment prospects, expected salaries, transferability of credits, and the quality of the education.⁹⁵ This

⁹⁰ *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

⁹¹ See *Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery).

⁹² See, e.g. BD1655232, BD1619298, BD1658596, BD155745, and BD153269 (alleging that employers “will not hire ITT grads because they find the college to be subpar,” that borrowers “had to take ITT off [their] resume” in order to get a job, that ITT grads were considered to have “no college education,” and that they were “mocked because of [their] education at ITT”).

⁹³ See, e.g., *ITT Trends* (containing statements from dozens of veterans who attended various ITT California campuses alleging, among other things, that “I feel scammed out of a proper education,” that “employers do not see the school as a real school,” that “no one would even consider me for employment,” and that “I wasted over 50k and 2 years of my life I can never get back”).


⁹⁴ The exhibits attached to the *Villalba* Complaint include the following: 521 statements explaining how an ITT degree operates as a disadvantage in the job market (Ex. 1); 326 statements explaining how ITT misrepresented the quality of instructors, training, curriculum, or facilities (Ex. 6); 62 statements describing how ITT is “ruining people’s lives” (Ex. 25); 473 statements about how ITT prevented other opportunities (Ex. 27); and 18 statements about how ITT debt has driven borrowers into or to the brink of homelessness (Ex. 28).

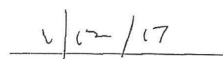
⁹⁵ See, e.g. *CFPB Case, MA AG Case, NM AG Case, Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), and *Lipscomb v. ITT Ed. Servs. Inc.* (M.D. FL Compl. filed Apr. 8, 2015). In addition, over 15 state AGs have issued subpoenas or CIDs relating to fraud and deceptive marketing against ITT from the beginning of 2004 through the end of May 2014. These states include: Arkansas, Arizona, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee and Washington. See ITT Form 10-Q Quarterly Report (June 30, 2014).

conduct has also led to actions against ITT by the Department⁹⁶ and ACICS,⁹⁷ as well as to numerous negative national news stories.⁹⁸

Given this extensively well-documented, pervasive, and highly publicized misconduct, the Department has determined that the value of an ITT education—like Corinthian—is likely either negligible or non-existent. In a court proceeding, ITT would very likely be unable to produce any persuasive evidence showing why the amount of recovery should be offset by value received by the borrowers from ITT education so as to preclude full recovery. Accordingly, it is appropriate for the Department to award eligible borrowers full relief.

CONCUR:


Office of the General Counsel


Date

⁹⁶ In the years leading up to its closure, the Department increased financial oversight over ITT and required it to increase its cash reserves to cover potential damages to taxpayers and students. The nature and scope of the Department's actions against ITT are contained within a series of letters from the Department to ITT dated: August 19, 2014, August 21, 2014, May 20, 2015, June 08, 2015, October 19, 2015, December 10, 2015, June 6, 2016, July 6, 2016, and August 25, 2016.

⁹⁷ See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016).

⁹⁸ See, e.g. Mary Beth Marklein, Jodi Upton and Sandhya Kambhampati, "College Default Rates Higher Than Grad Rates," USA TODAY (July 2, 2013) (listing more than 50 ITT campuses as "red flag" schools because student loan default rates were higher than graduation rates); Kim Clark, "The 5 Colleges that Leave the Most Students Crippled by Debt" Time.com (Sept. 24, 2014) (ranking ITT second on the list of schools that leave the most students crippled by debt).

[Additional submissions by Ms. Omar follow:]

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TAMARA BLANCHETTE, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ELISABETH DEVOS, *in her official
capacity as Secretary of Education*, and
UNITED STATES DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 19-cv- 1775

CLASS ACTION COMPLAINT

INTRODUCTION

1. Ten years ago, Named Plaintiff Tamara Blanchette, a low-income single mother and waitress, decided that she wanted to improve her career by becoming a probation officer. To achieve this goal, she researched schools online and scheduled a visit at the Minnesota School of Business ("MSB"), a for-profit institution of higher education, to learn more about its criminal justice program.

2. During her December 2008 visit, MSB staff told Ms. Blanchette that its associate degree in criminal justice would allow her to work as a probation officer in Minnesota and that its credits would easily transfer to other institutions. Based on those representations, Ms. Blanchette enrolled and borrowed thousands of dollars in federal student loans to cover the cost of her attendance.

3. Ultimately, Ms. Blanchette was unable to complete her degree at MSB and returned to her job as a waitress. In 2015, after being unable to afford her monthly student loan payments, Ms. Blanchette defaulted on her federal student loans.

4. In September 2016, following a multi-week trial, a Minnesota state court found that MSB and its sister school, Globe University ("Globe"), had made false, deceptive, and misleading statements to both enrolled and prospective students, including Ms. Blanchette, about its criminal justice program.

5. In December 2016, the United States Department of Education ("ED") likewise found that MSB and Globe had misrepresented its criminal justice program, as well as the transferability of its credits to other institutions. As a result, ED stripped MSB and Globe of their eligibility to participate in federal student aid programs under Title IV of the Higher Education Act ("HEA") (hereinafter, the "recertification denial"), causing the schools to close.

6. Pursuant to the terms of Ms. Blanchette's Master Promissory Note ("MPN") and applicable law and regulations, she and the proposed class have a defense against repayment that renders their federal student loan debt unenforceable.

7. Secretary of Education Elisabeth DeVos and ED (collectively, the "Defendants") nevertheless subjected Ms. Blanchette and the proposed class to involuntary collection efforts through the Bureau of the Fiscal Service's ("Fiscal Service") Treasury Offset Program ("TOP") and administrative wage garnishment ("AWG").

8. Ms. Blanchette brings this lawsuit under the Administrative Procedure Act ("APA") and Due Process Clause on behalf of herself and all other individuals who: (i) took out federal student loans to attend MSB and Globe based on the schools' misrepresentations about its criminal justice program and the transferability of its credits; (ii) testified or submitted sworn

affidavits in the Minnesota state trial about their reliance on those misrepresentations; and (iii) have been subjected to involuntary collection efforts by Defendants.

9. Ms. Blanchette asks this Court to find that the Defendants violated the APA by: (i) certifying and re-certifying the legal enforceability of the proposed class of MSB and Globe borrowers' defaulted student loan debt, even though Defendants knew about the legal bar to the collection of those loans resulting from MSB's and Globe's illegal misconduct; (ii) actually offsetting these borrowers' debts by seizing their tax refunds and other federal benefits; and/or (iii) issuing a wage garnishment or withholding order. Ms. Blanchette also seeks to halt the further certification or garnishment of the proposed class's defaulted student loan debt, as well as to recoup amounts previously seized.

JURISDICTION AND VENUE

10. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the APA, 5 U.S.C. §§ 701-706, the HEA, 20 U.S.C. § 1082, the Debt Collection Improvement Act, 31 U.S.C. § 3701, and the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V. The Court also has the authority to order a remedy pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

11. Because this is an action against an officer and agency of the United States, venue is proper in this district pursuant to 28 U.S.C. § 1391(e). Venue is also proper in this district because Secretary DeVos performs her official duties here. Finally, many of the events giving rise to this action took place here.

PARTIES

12. Plaintiff Tamara Blanchette is a natural person who resides in Minneapolis, Minnesota.

13. Defendant Elisabeth DeVos is the Secretary of Education. In her official capacity, the Secretary of Education oversees all operations of the Department of Education and the administration of federal student loans, including the Federal Family Education Loan ("FFEL") and Direct Loan programs. She has the ultimate duty and power to collect, discharge, cancel, settle, or compromise federal student loans. In this capacity, the Secretary of Education may place a loan into defaulted status, report that default to all three major credit bureaus, certify and refer that debt to Treasury for payment by offset, and issue a wage garnishment order.

14. Defendant ED is a department of the executive branch of the United States government headquartered in Washington, D.C. and an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

ALLEGATIONS COMMON TO THE CLASS

Defaulting on Federal Student Loan Debt

15. Pursuant to the HEA, borrowers who fail to make their scheduled payments for a period of at least 270 days are considered to be in default on their federal student loans. 20 U.S.C. § 1085(l).

16. Once a borrower defaults, the consequences are severe.

17. The entire unpaid balance of the borrower's loan, including interest, immediately becomes due. The interest is also capitalized, which increases the principal balance of the loan.

18. A borrower can also be held responsible for any court costs, collection fees, and attorney's fees associated with the defaulted student loan debt. These costs and fees can add as much as twenty-five percent to the balance of Direct and FFEL loans.

19. A borrower in default also loses his or her eligibility to receive additional federal student aid (including Pell grants), which may prevent the borrower from returning to school.

20. In addition, the HEA requires the Secretary of Education to report the borrower's default to all three major credit bureaus, 20 U.S.C. § 1080a(a),¹ after first verifying "its accuracy and completeness," *id.* § 1080a(c).²

21. According to the terms of the Borrower's Rights and Responsibilities Statement, which is included with every Master Promissory Note, ED must provide at least thirty days' notice to a borrower before reporting the default information to credit bureaus.³ This allows the borrower to dispute the debt before it is reported.

22. Once reported, a borrower's default remains on her credit report for at least seven years. 20 U.S.C. § 1080a(f).

23. Defaults can damage borrowers' credit by lowering their overall credit scores. As a result, defaults can make it more difficult for borrowers to buy a car or house, pay insurance premiums, open a bank account, get a credit card or other line of credit, or obtain certain jobs.

24. There are three ways a borrower can get out of default: repayment in full, loan consolidation, or loan rehabilitation. Each option can only be used once.

25. As relevant here, loan rehabilitation involves a written agreement between the borrower and loan holder to make nine voluntary, reasonable, and affordable monthly payments within twenty days of the due date over a period of ten consecutive months. Once made, the

¹ The HEA makes clear that borrowers of Direct loans will have the "same terms, conditions, and benefits" as borrowers of FFEL loans. 20 U.S.C. § 1087e(a)(1).

² See also Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2(a)(1) (prohibiting the reporting of consumer information that a person "knows or has reasonable cause to believe" is inaccurate).

³ See U.S. Dep't of Educ., Master Promissory Note, William D. Ford Federal Direct Loan Program, Direct Subsidized and Direct Unsubsidized Loans Borrower's Rights and Responsibilities Statement, OMB No. 1845-0007, at 12, available at: <https://ifap.ed.gov/dlfsheets/attachments/DLSubUnsubMPNnodatalabels.pdf> ("Direct Loan MPN"); see also U.S. Dep't of Educ., Federal Family Education Loan Program (FFELP), Federal Stafford Loan, Master Promissory Note, Borrower's Rights and Responsibilities, OMB No. 1845-0006, at *7, available at: <https://ifap.ed.gov/dpceletters/attachments/FF0608StaffApp2008.pdf> ("FFEL Loan MPN").

borrower's loans will no longer be in default, the record of default will be removed from the borrower's credit history (but the late payments that led to the default will remain), collection of payments through wage garnishment or Treasury offset will stop, and the borrower's eligibility for federal student aid will be restored.

ED's Extrajudicial Collection Powers

26. As part of its management of the federal student loan program, ED possesses extensive extrajudicial collection powers, including the power to seize federal student borrowers' tax refunds or other federal benefits and garnish their wages without a court order. *See* 31 U.S.C. § 3716; 31 U.S.C. § 3720A; 31 U.S.C. § 3720D. ED can choose to pursue these different collection methods separately or simultaneously.

27. Like other federal agencies, ED relies on Treasury's Fiscal Service to effectuate offsets in order to secure payment for debts owed.

28. In fiscal year 2017, for example, Treasury collected over \$14 billion in debt owed to ED.

29. The Debt Collection Improvement Act ("DCIA") governs the collection of all debts owed to the United States, including through the Fiscal Service's TOP.

30. Under the DCIA, before submitting a debt to Treasury, ED must first comply with certain notice requirements to the borrower. *See* 31 U.S.C. §§ 3716, 3720A(b)(3); 31 C.F.R. § 285.2(d); 34 C.F.R. § 30.33. Once it has provided this notice, ED must then certify only those debts that it determines are legally enforceable. *Id.*

31. In other words, prior to certifying a debt to Treasury for offset, ED must make a final determination of legal enforceability, which includes certification that the debt is due, in the

amount stated, with no legal bars to collection. 31 U.S.C. § 3720A(b); 31 C.F.R.

§§ 285.2(d)(1)(i), 285.5(b), (d)(3).

32. One possible legal bar to collection includes a borrower's defense against repayment. Pursuant to the terms of the MPN, a student loan borrower has a defense against repayment whenever the "school did something wrong or failed to do something that it should have done."⁴ Federal regulations also allow a borrower to assert a defense against repayment whenever the school commits an act or omission relating to the making of a loan (or the provision of educational services for which the loan was provided) that would give rise to a cause of action under state law. 34 C.F.R. § 685.206(c)(1); *see also* 20 U.S.C. § 1087e(h).⁵

33. If ED determines that the borrower's student loan debt is legally enforceable and proceeds to certify that debt to the Secretary of Treasury, Treasury's Fiscal Service will offset the borrower's tax refund or other federal benefits to satisfy the debt in question. 31 C.F.R. § 285.2(b)(2).

34. Once it has done so, the Fiscal Service will then inform the debtor of the offset. 31 C.F.R. § 285.2(e). This will be the second notice that the borrower receives.

35. After the Secretary of Education has notified a debtor of her initial intent to offset a debt, the Secretary of Education may also offset future years' tax refunds without providing the debtor with any additional notice. 34 C.F.R. §§ 30.22(d), 30.33(a).

⁴ See Direct Loan MPN at 13; FFEL Loan MPN at *2.

⁵ Federal regulations governing FFEL loans also dictate that "[a]ny lender holding a loan is subject to all claims and defenses that the borrower could assert against the school with respect to that loan," so long as the borrower can establish that there was a sufficiently close relationship between the school and the lender. See 34 C.F.R. § 682.209(g). This provision of the FFEL regulations reflects the Department of Education's adoption of the Federal Trade Commission's Preservation of Consumers' Claims and Defenses regulation, commonly referred to as the "Holder Rule." See 16 C.F.R. §§ 433.1-433.2.

36. In order to effectuate future offsets, however, the Secretary of Education must re-certify the debt to Treasury's Fiscal Service every year. This re-certification must include a new final agency determination that the debt continues to be legally enforceable. 31 C.F.R.

§ 285.5(d)(3)(i)(B), (d)(7)(i).

37. Moreover, the Secretary of Education has an ongoing obligation to immediately notify the Fiscal Service of any change in status to the legal enforceability of a debt. 31 C.F.R. §§ 285.2(d)(4), (d)(10)(iv).

38. The Secretary of Education may also choose to garnish a borrower's wages as a means of collecting defaulted student loan debt. 20 U.S.C. § 1095a; 31 U.S.C. § 3720D(a). The Secretary of Education may only do so, however, if she follows certain procedures. *See* 20 U.S.C. § 1095a(a); 31 U.S.C. § 3720D(b).

39. Pursuant to the Department's regulations, at least thirty days prior to issuing any garnishment order, ED must provide written notice of its intent to garnish to the borrower via first class mail. 34 C.F.R. § 34.4. This notice must include the nature and amount of the debt, *id.* § 34.5, and an explanation of the borrower's rights and applicable deadlines, *id.* § 34.6.

40. ED must offer an opportunity for a hearing to any borrower who objects regarding "the existence, amount, or current enforceability of the debt." 34 C.F.R. § 34.6; *see also* 20 U.S.C. § 1095a(a)(5). The hearing official's decision is a final agency action under the APA. 34 C.F.R. § 34.17.

41. Within thirty days of the hearing official's decision—or, alternatively, within thirty days of the borrower's failure to timely request a hearing—ED will issue a garnishment order directly to the borrower's employer. 34 C.F.R. § 34.18. The Secretary of Education has

the right to take legal action against an employer in order to enforce that order. 20 U.S.C. § 1095a(a)(6).

42. Once issued, a garnishment or withholding order remains in effect until the Secretary of Education rescinds the order or the debt is fully paid, including interest, penalties, and collection costs. 34 C.F.R. § 34.26. Such an order also qualifies as a final agency action under the APA.

MSB and Globe

43. MSB is a for-profit institution of higher education with its principal place of business in Woodbury, Minnesota. As recently as 2016, MSB operated campuses in Blaine, Brooklyn Center, Elk River, Lakeville, Moorhead, Plymouth, Richfield, Rochester, Shakopee, and St. Cloud, Minnesota. MSB also enrolled Minnesota students in the MSB-Online Division from Richfield, Minnesota.

44. Globe—MSB's sister school—is also a for-profit institution of higher education with its principal place of business in Woodbury, Minnesota. As recently as 2016, Globe operated two campuses in Minneapolis and Woodbury, Minnesota; a campus in Sioux Falls, South Dakota; campuses at seven Wisconsin locations; and an online program.

45. MSB and Globe are jointly operated by the same management team, share certain resources, and are owned by the same family. See *Minnesota v. Minnesota Sch. of Business, Inc.*, No. 27-cv-14-12558, 2016 WL 9709976, at *2-*3 (Minn. Dist. Ct. Sept. 8, 2016) (Trial Order) (“*MSB*”). In addition, MSB and Globe “h[o]ld themselves out to the public as separately titled, but factually indistinguishable entities.” *Id.* at *47.

46. From 2009 to 2015, MSB and Globe collectively enrolled approximately 28,000 students at their Minnesota campuses (including the online division located in Richfield, Minnesota). More than 14,000 students graduated during that time period.

47. As of September 2016, close to 3,000 students were still enrolled at either MSB or Globe. Approximately 1,300 of those students were pursuing degrees in criminal justice.

48. As described in greater detail below, both MSB and Globe defrauded numerous students, misconduct for which they were ultimately found jointly liable. *MSB*, 2016 WL 9709976, at *47.

ED's Knowledge of MSB's and Globe's Fraud

49. The Department of Education has known since at least December 2016 that MSB and Globe violated Minnesota state law by misrepresenting its educational services to prospective and current students.

50. This knowledge is based on the Findings of Fact, Conclusions of Law, and Order by the District Court for the Fourth Judicial District in Hennepin County, Minnesota (the "Minnesota District Court") and the Department of Education's own recertification denials, which ended MSB's and Globe's participation in Title IV programs.

The Minnesota District Court Finds that MSB and Globe Defrauded Numerous Students

51. On September 8, 2016, following a multi-week trial, the Minnesota District Court held that MSB and Globe violated the state's Consumer Fraud Act ("CFA") and Deceptive Trade Practices Act ("DTPA") when the schools "advertis[ed] and market[ed] their criminal justice program as providing all or some portion of the education and training necessary to become a Minnesota police officer." *MSB*, 2016 WL 9709976, at *48. The Minnesota District Court further explained that:

Defendants' program was not in fact certified by the POST board to permit a graduate to become a police officer, nor was it a regionally-accredited program that permitted its graduates to attend a . . . "skills training" course to become a licensed Minnesota police officer. Yet, Defendants targeted their criminal justice program to students interested in careers as Minnesota police officers; advertised that their program could make graduates eligible to become police officers or participate in additional training to do so; had recruiters recommend the program to students who expressed an interest in becoming police officers in Minnesota; and told prospective students that they could become police officers or would only need "additional training" to become police officers. These representations were false and misleading and in violation of the CFA and DTPA.

Id.

52. The Minnesota District Court also concluded that MSB and Globe violated both the state's CFA and DTPA when the schools:

[M]arket[ed] their criminal-justice [sic] associate's [sic] degree program as a means for becoming a probation officer in Minnesota. . . . [P]ro probation officer jobs in Minnesota at a minimum require a bachelors [sic] degree, and Defendants knew this. Yet, Defendants advertised and recommended their criminal justice associate's [sic] degree program as a means for students to become probation officers.

Id. at *49.

53. Finally, the Minnesota District Court made factual findings about specific MSB and Globe students who were misled by the schools, including Named Plaintiff Tamara Blanchette. *See generally*, MSB, 2016 WL 9709976, at *18-*40.

54. On December 14, 2016, ED confirmed to former Minnesota Attorney General Lori Swanson that it had received a copy of the Minnesota District Court's September 2016 Trial Order. *See* Exhibit A, Minnesota Attorney General Lori Swanson Letter to ED at 1.

ED Issues Findings Confirming and Expanding Upon the Minnesota District Court Order

55. On December 6, 2016, ED issued recertification denials for both Globe and MSB, ending their participation in federal student aid under Title IV. *See generally* Exhibit B, MSB Recertification Denial; Exhibit C, Globe Recertification Denial. ED provided, *inter alia*, two bases for this decision.

56. First, ED's recertification denials specifically refer to the Minnesota District Court's Trial Order as a "judicial determination" that both schools had "committed fraud involving Title IV program funds." Exh. B at 2; Exh. C at 3. Such a determination makes an institution ineligible for further participation in Title IV. *See* 20 U.S.C. § 1002(a)(4)(B); 34 C.F.R. § 600.7(a)(3)(ii).

57. Second, the recertification denials explain that, as part of MSB's and Globe's Program Participation Agreements ("PPA") under the HEA, each institution had agreed to comply with all Title IV requirements,⁶ including the prohibition on making "substantial misrepresentation[s] about the nature of its educational program, its financial charges, or the employability of its graduates." *See* 34 C.F.R. § 668.71.

58. Because MSB and Globe had "made substantial misrepresentations about the nature of its criminal justice program and the employability of the graduates of that program," as well as "[their] students' ability to transfer credits . . . to other institutions," Exh. B at 2; Exh. C at 2, both schools violated at least three Title IV, HEA program requirements,⁷ including, most critically, ED's prohibition on substantial misrepresentations "in all forms." Exh. B at 4; Exh. C at 4.

59. More specifically, ED found that MSB and Globe "substantially misrepresented to students and prospective students the ability of graduates of MSB's [and Globe's] criminal justice program[s] to become police officers and probation officers in the state of Minnesota. . . . Here, MSB [and Globe] affirmatively misrepresented Minnesota's licensing requirements for

⁶ *See generally* 20 U.S.C. § 1094(a)(1); 34 C.F.R. § 668.14(b)(1) (requiring institutions that participate in the Title IV program under the HEA to "comply with all statutory provisions of or applicable to Title IV of the HEA" as well as "all applicable regulatory provisions prescribed under that statutory authority").

⁷ The other two Title IV, HEA program requirements that MSB and Globe violated include: (i) fiduciary duty and (ii) administrative capability. *Id.* at 4.

police and probation.” Exh. B at 5; Exh. C at 5. These misrepresentations took place from 2009 until 2014.

60. In addition, ED found that:

[B]lanket statements MSB [and Globe] made to prospective students conflating national and regional accreditation . . . constitute substantial misrepresentations. Likewise, some of the substantial misrepresentations at issue were made to prospective students who informed MSB [and Globe] that they were interested in transferring credits earned at MSB [or Globe] to an institution within the University of Minnesota or within the Minnesota State Colleges and University system. All of those institutions are accredited by the Higher Learning Commission, a regional accreditor, and MSB’s [and Globe’s] credits did not transfer. In addition, in some cases, the prospective student asked MSB [or Globe] about the transferability of MSB’s credits to a particular institution, and MSB [or Globe] misrepresented the transferability of [its] credits to that institution.

Exh. B at 11-12; Exh. C at 11-12. These misrepresentations took place from 2007 until 2014 and affected students “at each campus” in a broad range of programs of study. Exh. B at 11; Exh. C at 11.

61. The Department of Education explicitly incorporated in its recertification denials the Minnesota District Court’s factual findings about MSB’s and Globe’s misrepresentations to specific students who testified or submitted sworn affidavits, including Named Plaintiff Tamara Blanchette. *See* Exh. B at 3 n.2; Exh. C at 3 n.2.

FACTUAL ALLEGATIONS CONCERNING NAMED PLAINTIFF

Ms. Blanchette’s Enrollment at MSB

62. Ms. Blanchette attended MSB, located at 3680 Pheasant Ridge Drive NE, Blaine, MN 55449, from approximately January 2009 until May 2011, where she was enrolled in its criminal justice associate degree program.

63. Ms. Blanchette borrowed \$15,500 in FFEL loans and \$8,000 in Direct loans to pay for her attendance at MSB.

64. As explained by the Minnesota District Court, Ms. Blanchette wanted to pursue a career as a probation officer. *MSB*, 2016 WL 9709976, at *36. To explore this career option, Ms. Blanchette searched the internet and learned that MSB offered a criminal justice program. *Id.* She scheduled a visit with admissions representative Brian Saintey to learn more about the program and see “if it was a good fit for [her].” *Id.*

65. During her visit on December 16, 2008, MSB made numerous representations to Ms. Blanchette.

66. First, when Ms. Blanchette told Mr. Saintey that she wanted to enroll at MSB in order to become a probation officer, he “responded by telling her she had made a ‘good choice’ and that her career goal was something MSB ‘could help [her] with.’” *Id.* He then “recommended that Ms. Blanchette complete MSB’s criminal justice associate degree program[] and assured her that upon her graduation from the two-year program she could begin her career as a probation officer.” *Id.*⁸ At the time, MSB did not even offer a bachelor’s degree in criminal justice. *Id.* Because Minnesota requires probation officers to have at least a bachelor’s degree, the Minnesota District Court found that MSB’s statements to Ms. Blanchette were false, deceptive, and misleading.

67. Second, Ms. Blanchette told Mr. Saintey during her December 2008 visit that credit transferability was “a big deal for [her],” as she planned “to obtain an associate’s [sic] degree at MSB, gain some work experience, and then attend a different college to earn a higher degree.” *Id.* at *37. Mr. Saintey falsely stated that transferring her credits would “not be a problem for her” since MSB credits transferred to other institutions. *Id.* ED found in its

⁸ *Id.* (“Defendants’ own records confirm that Ms. Blanchette told admission representative Saintey that she was ‘very interested’ in becoming a probation or parole officer” and that Mr. Saintey recommended that she “enroll in Defendants’ criminal justice associate’s [sic] degree program.”).

recertification denials that MSB's statements about the transferability of its credits were a substantial misrepresentation.

68. Due to life circumstances unrelated to this case, including her daughter's drug addiction and attempted suicide, Ms. Blanchette struggled with her studies. *Id.* at *37. She attempted to secure accommodations from MSB that would allow her to help her daughter and return to her studies at a later date, but was ultimately unsuccessful in doing so. She left MSB shortly thereafter.

69. After leaving MSB, Ms. Blanchette resumed working as a waitress and bartender. She struggled to make ends meet and could not afford her monthly student loan payments. As a result, Ms. Blanchette defaulted on all seven of the federal student loans she took out to attend MSB.

70. On or about March 8, 2015, the Secretary of Education sent information about Ms. Blanchette's default to all three major credit bureaus.

Defendants Offset Ms. Blanchette's Tax Refund Despite Knowing About a Legal Bar to the Collection of her Defaulted Student Loans

71. Upon information and belief, on a date known to the Secretary of Education, the Department of Education sent a Notice of Proposed Treasury Offset to Ms. Blanchette. This notice referred to her defaulted student loan debt as "legally enforceable" and provided her with the options of either repaying the debt in full or entering into a "satisfactory" repayment agreement. This notice did not specifically alert Ms. Blanchette to the fact that she could dispute the proposed offset by raising a defense against repayment.

72. Given Ms. Blanchette's low income and lack of discretionary funds, she was unable to hire legal counsel to help her interpret the notice or challenge the Defendants' proposed offset.

73. Upon information and belief, on a date known to the Secretary of Education, the Department of Education certified Ms. Blanchette's debt as legally enforceable and referred her student loan debt to the Fiscal Service for tax offset.

74. Upon information and belief, on several dates known to the Secretary of Treasury, the Fiscal Service offset Ms. Blanchette's tax refunds for payment of her student loan debt. In 2018, for example, TOP seized at least \$1,906 of Ms. Blanchette's 2017 state tax refund.

75. ED continued to certify Ms. Blanchette's MSB-related student loan debt for offset despite actual knowledge from the Minnesota District Court Trial Order and its own findings that her loans were not legally enforceable.

76. As of May 2019, Ms. Blanchette successfully rehabilitated her defaulted student loans. As a result, ED is legally obligated to withdraw its certification of her student loan debt for tax refund offset.

77. Given Ms. Blanchette's financial resources, she may default on her student loans again in the future. If she does, and ED certifies her defaulted loans for offset, she will not be able to get out of default through loan rehabilitation a second time. Thus, she will have fewer options to stop the seizure of her tax refunds, making the consequences of default more severe.

78. According to the National Student Loan Data System, as of January 2019, the federal student loan balance attributable to loans Ms. Blanchette took out to attend MSB is approximately \$29,418. ED has also charged Ms. Blanchette an additional \$5,891.47 in collection fees and costs.

CLASS ACTION ALLEGATIONS

79. Named Plaintiff Tamara Blanchette files this class action on behalf of herself and all other individuals who are similarly situated. She seeks to represent a class consisting of:

All individuals who: (i) borrowed federal student loans to attend MSB or Globe based on the schools' misrepresentations of either its criminal justice program or the transferability of its credits to other institutions or both; (ii) testified or submitted sworn affidavits in the Minnesota state trial about their reliance on those misrepresentations; and (iii) have been or will be subjected to ED's coercive collection efforts through either TOP, AWG, or both.

80. The proposed class satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure.

81. The class is so numerous that joinder of all members is impracticable. Fifteen students testified during trial, while an additional 179 students submitted sworn affidavits. Some members of the proposed class have already been subjected to coercive collection efforts by the Defendants, while other members of the group may be subjected to similar collection efforts in the future. The exact number of class members can be determined easily using Defendants' records.

82. The nature of relief sought, as well as questions of fact and law, are common to all members of the class. The common questions of law and fact also predominate over any questions affecting individual members of the class.

83. All members of the proposed class have been subjected to MSB's and Globe's misrepresentations about its criminal justice program, the transferability of its credits, or both.

84. The common questions of law and fact include, but are not limited to:
- a. Whether ED's final agency determination that defaulted student loan debt from the proposed class of MSB and Globe borrowers is legally enforceable violates the APA;
 - b. Whether ED's certification and re-certification of, and failure to withdraw the existing certifications of, defaulted student loan debt from the proposed class of MSB and Globe borrowers for offset violates the APA;

- c. Whether ED's wage garnishment of defaulted student loan debt from the proposed class of MSB and Globe borrowers violates the APA; *and*
- d. Whether the Department's pre-deprivation notice to the proposed class of MSB and Globe borrowers about involuntary collection violated their due process rights under the United States Constitution.

85. The claims of Named Plaintiff Tamara Blanchette are typical of the claims of the proposed class. Each member borrowed federal student loans to attend MSB or Globe. Ms. Blanchette, like members of the proposed class, relied upon MSB's and Globe's misrepresentations about the schools' criminal justice programs and the transferability of credits. She, along with members of the proposed class, has been harmed by the Department's unlawful, unreasonable, and arbitrary decision that her defaulted student loan debt is legally enforceable and thus subject to involuntary collection, including through tax refund offset or wage garnishment.

86. Named Plaintiff Tamara Blanchette is also an adequate representative of the proposed class. Her interests do not conflict with the interests of the class she seeks to represent. She intends to prosecute this action vigorously. In addition, Ms. Blanchette has retained counsel who are competent and experienced in APA, complex consumer protection, and class action litigation. She is represented by National Student Legal Defense Network ("NSLDN"). NSLDN counsel have extensive knowledge of higher education law, consumer protection, and student debt. The interests of the proposed class will be adequately protected by Ms. Blanchette and her attorneys.

87. A class action is superior for the fair and efficient adjudication of this matter. Defendants have acted in the same unlawful manner with all class members. A legal ruling

concerning the unlawfulness of Defendants' actions under the APA and United States Constitution would vindicate the rights of every class member. Finally, a class action would serve the economies of time, effort, and expense while preventing inconsistent results.

CAUSES OF ACTION

Count One: Unlawful Agency Action Under the Administrative Procedure Act

88. Named Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

89. Named Plaintiff seeks a determination that Secretary DeVos and ED violated the APA by making an improper final agency determination, or failing to make a required final agency determination, that her student loan debt—and that of the proposed class—was legally enforceable and, thus, could be collected through offset or wage garnishment.

90. First, Secretary DeVos' and ED's certification of Named Plaintiff's and the proposed class's debt for offset was required to include a final agency determination that the debt, in the amount stated, was due and that there were no legal bars to collection.

91. In light of ED's actual knowledge of MSB's and Globe's illegal misconduct and the legal bar to enforcement of Named Plaintiff's and the proposed class's debt created by this misconduct, Secretary DeVos' and ED's final agency determination that Named Plaintiff's and the proposed class's student loan debt was legally enforceable is arbitrary and capricious, in violation of the APA, as well as in violation of Secretary DeVos' statutory duties under the DCIA. In the alternative, Secretary DeVos' and ED's failure to make the required final agency determination prior to certifying Named Plaintiff's and the proposed class's debt for offset is in violation of the APA and DCIA.

92. Second, Secretary DeVos' and ED's determination that Named Plaintiff's and the proposed class's student loan debt is legally enforceable and thus subject to collection through wage garnishment is also arbitrary and capricious in violation of the APA and DCIA.

Count Two: Due Process Violation Under the Fifth Amendment to the United States Constitution

93. Named Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

94. The Fifth Amendment provides: "No person shall . . . be deprived of life, liberty, or property, without due process of law." Due process requires that, at a minimum, individuals receive notice and an opportunity to be heard before they are deprived of property.

95. Named Plaintiff and the proposed class have a constitutionally protected property interest in their tax refunds, other federal benefits, and wages.

96. Named Plaintiff and the proposed class were each deprived of that property interest when Secretary DeVos and ED certified and re-certified their defaulted student loan debt to Treasury's Fiscal Service for offset without first providing any pre-deprivation notice about: (i) the possibility of challenging the offset by asserting a defense against repayment; (ii) the fact that Named Plaintiff's and the proposed class's debt were not legally enforceable, given MSB's and Globe's illegal misconduct; and (iii) Secretary DeVos' general authority to compromise, cancel, or settle student loan debt.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff respectfully requests that this Court:

A. Certify the class as defined in paragraph 79 pursuant to Rule 23 of the Federal Rules of Civil Procedure;

- B. Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that class members' student loan debt from MSB and Globe is not legally enforceable;
- C. Further declare that the certification of class members' student loan debt for offset is unlawful under the DCIA;
- D. Further declare that the Department of Education is obligated to stop certifying and recertifying, and withdraw the existing certifications of, class members' student loan debt for offset;
- E. Further declare that class members' student loan debt cannot be collected through administrative wage garnishment;
- F. Strike ED's final determination that class members' debts are legally enforceable as arbitrary and capricious, unlawful, and/or short of a mandatory duty, in violation of the APA and the DCIA;
- G. Order ancillary relief under 28 U.S.C. § 2202, including a refund of any amounts already seized from class members pursuant to offset or garnishment;
- H. Retain jurisdiction of this matter until Defendants have fulfilled their legal and Court-ordered obligations, as set forth in this Complaint and any subsequent orders of this Court;
- I. Award Plaintiff reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation under the Equal Access to Justice Act, 28 U.S.C. § 2412; *and*
- J. Grant such further relief as the Court may deem just and proper.

Respectfully Submitted,

/s/ Robyn K. Bitner

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12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 THERESA SWEET, CHENELLE
 15 ARCHIBALD, DANIEL DEEGAN, SAMUEL
 16 HOOD, TRESA APODACA, ALICIA DAVIS,
 and JESSICA JACOBSON on behalf of
 themselves and all others similarly situated,

17 *Plaintiffs,*

18 v.

19 ELISABETH DEVOS, in her official
 20 capacity as Secretary of the United States
 21 Department of Education,

22 And

23 THE UNITED STATES DEPARTMENT OF
 24 EDUCATION,

25 *Defendants.*

Case No.: 19-cv-03674

AFFIDAVIT

- 1 1. My name is Whitney Sletten.
- 2 2. I am submitting this affidavit in support of the Plaintiffs in Sweet v. DeVos.
- 3 3. I attended school at Art Institute at Minneapolis, MN from approximately 1/15/2013 to
- 4 5/15/2015.
- 5 4. I was enrolled in the Bachelor's Degree of Graphic Design.
- 6 5. I borrowed federal student loans to attend this program.
- 7 6. I currently have approximately between myself and my mother's Parent Plus loan
- 8 \$78,000.00 in outstanding federal student loans.
- 9 7. I am worse off today than before I went to school.
- 10 8. My mother and I both submitted a borrower defense to the Department of Education
- 11 (Department) on or around 1/28/2019.
- 12 9. On 7/3/2019, the Borrower Defense Unit of the Department confirmed that they received
- 13 my borrower defense. My claim ID number is: 01536221. Mother's Parent Plus Loan's
- 14 claim ID number is: 01546909
- 15 10. The Department has neither granted nor denied my borrower defense.
- 16 11. The Department has not requested any additional information from me about my
- 17 borrower defense.
- 18 12. During the Department's delay, the interest on my loans continues to grow.
- 19 13. The Department's refusal to grant or deny my borrower defense has made it difficult for
- 20 me to plan for my financial future.
- 21 14. I am back in school trying to earn a viable degree in another field. The degree from Art
- 22 Institute has proven useless, even scorned upon by potential employers. I am now having
- 23 to take on more student loan debt to get a degree that provides a viable career option for
- 24 me. My payments on the debt for money paid the Art Institute is roughly \$300 and I will
- 25 be paying it for decades. The interest just keeps adding up and the debt seems to go
- 26 nowhere. Because of the useless degree from Art Institute I am having to take on more
- 27 student loan debt, and will have an even higher payment in the future.
- 28 15. My mother is paying almost \$700.00 a month after stretching the loan out for 25 years.
- She is financially strapped by this debt and will never be free of it. If she becomes unable

to make the payments her social security will be garnished in the future and she will be unable to live.

16. The Department's refusal to grant or deny my borrower defense has caused me to delay marriage and children because I have had to return to school for a different degree and can't even pay my student debt. I would only be a burden to a spouse and unable to support children.

17. The Department's refusal to grant or deny my borrower defense has caused me emotional harm because the financial burden is great, and returning to school at 26 years old is very difficult. I have had to move back into my parent's home. The hardest part is watching how my mother is struggling to survive under this debt, and the anxiety it brings her.

18. The Department's refusal to grant or deny my borrower defense has caused me to lose faith that the government will protect students like me because the failure thus far to hold these predatory for-profit schools accountable for how they are misleading students and ruining their lives.

19. I do not believe that higher education has made my life better.

I sign this affidavit under the pain and penalty of perjury.

Friday, July 04, 2014

 clear

Whitney Sletten

[Additional submissions by Chairman Scott follow:]

To: Under Secretary Ted Mitchell
 From: Borrower Defense Unit
 Date: October 24, 2016
 Re: Recommendation for Everest/WyoTech Borrowers Alleging Transfer of Credit Claims

The Borrower Defense team recommends borrower defense (BD) relief for students who: (1) enrolled at any Corinthian-operated, nationally accredited Everest¹ campus or at WyoTech's Laramie campus² between the time Corinthian opened or acquired the campus and April 2015; and (2) alleges that Corinthian misrepresented the transferability of credits earned at that campus. Corinthian represented that credits earned at these Everest campuses were generally transferable. These representations were false and misleading. Accordingly, for the reasons explained below, full BD relief is appropriate for all Everest and WyoTech Laramie borrowers alleging misrepresentations regarding the transferability of credits, subject to reduced relief for those borrowers impacted by the statute of limitations.

BACKGROUND

Everest consistently misled prospective students about the transferability of credits earned at their campuses in two ways. First, school staff made explicit representations regarding transferability. Second, staff strongly implied transferability by emphasizing the school's accreditation status.

The misleading nature of these statements hinges on the key differences between national career-related and regional institutional accreditation. Traditionally, national accreditors accredit mainly for-profit, career-based, single-purpose institutions, both degree and non-degree.³ By contrast, regional accreditors accredit public and private, mainly non-profit and degree-granting, two- and four-year institutions.⁴ Broadly speaking, credits earned at nationally accredited colleges "are rarely accepted at regionally accredited schools,"⁵ and have never been generally transferable.⁶ Almost every Everest campus was nationally accredited since its inception, and Corinthian personnel were fully aware of the negative impact of their accreditation on transferability.⁷ Nevertheless, as Senator Tom Harkin notes in his 2012 report on the for-profit college sector (the "Harkin Report"), recruiters at for-profits "sometimes play on prospective students' ignorance about accreditation in order to use their schools' accreditation as a selling point."⁸

As discussed below, Everest personnel regularly led prospective students to believe, either through express or strongly implied representations, that credits earned at Everest would generally be

¹ Everest schools include Florida Metropolitan University campuses, which Corinthian acquired in 1996 and later rebranded as Everest University.

² To date, the BD Team has only reviewed WyoTech claims from the Laramie campus. While we have no reason to believe the facts and recommendations in this memorandum do not apply to other WyoTech campuses, at this time we are not extending our analysis to those campuses. For the purposes of this memorandum, references to "Everest" include WyoTech Laramie.

³ See Council for Higher Education Accreditation: *An Overview of US Accreditation*, <http://www.chen.org/pdf/Overview%20of%20US%20Accreditation%202015.pdf>. For this memorandum, "national" refers to national career-related accreditors or accreditation.

⁴ *Id.* p. 2.

⁵ Harkin Report, p. 56, citing Council for Higher Education Accreditation, *The Fundamentals of Accreditation: What Do You Need to Know*, Council for Higher Education Accreditation, p. 7, September 2002, http://www.chen.org/pdf/fund_accresd_20ques_02.pdf (accessed May 24, 2012).

⁶ Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm.

⁷ See Mark Pelesh's statement at <https://www.insidehighered.com/news/2007/02/26/transfer>.

⁸ Harkin Report at 55.

accepted at regionally accredited post-secondary institutions. In actuality, those credits generally did not transfer to or were not accepted at regionally accredited schools.

I. Summary of Evidence of Representations of Transferability

Everest staff orally represented to potential students that they could generally transfer their Everest credits to any other school. These oral representations occurred both in person and during telephone calls with prospective students. Specifically, the school personnel: (a) stated credits were generally transferable; and/or (b) "play[ed] on prospective students' ignorance about accreditation" to make claims about national accreditation that strongly implied general transferability.⁹

A. Student Accounts of In-Person Oral Representations of Transferability

Hundreds of student applications reviewed to date provide corroborative evidence that Everest admissions personnel regularly made misleading oral representations about transferability. Indeed, our review of claims spanning from 1998 through 2010 shows that personnel made consistent transferability claims throughout the entire time that Corinthian operated the schools.

A sample of claims from the Everest Brandon campus demonstrates the consistency and specificity of false transferability claims made by school representatives:

- "In my entrance interview, I was told that I should enroll in the paralegal program if I planned on being a lawyer. I was told guarantee that my credits would be good to transfer to USF or UT and then Stetson Law."¹⁰
- "I was assured when I started that I could transfer my credits to any other school if I chose to do so."¹¹
- "I was told my credits would transfer to University of South Florida for my BA in Finance and they did not so I was stuck with all these loans and no school will take them I was told that employers will recognize the degree from them and they laugh at me."¹²
- "Not a single credit was transferable. I specifically remember asking the rep before enrolling if credits were transferable and she said "absolutely," never once telling me that accreditation of the school was not the same as a traditional."¹³
- "The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school."¹⁴
- "The representative for FMU, asked what my goals were for my education. I stated that I wanted to attend USF for a bachelors degree. He said my credits would absolutely transfer and that he worked hand in hand with the academic advisers over at USF, to help students transition smoothly. He said that my credits would transfer even mid-way through the program."¹⁵
- "The admissions department also ensured me that earned credits would be accepted by other educational institutions... later discovered that credits from Everest University were not honored at state and local universities."¹⁶

⁹ As discussed below, in Section III(B)(1), footnote 102, the implied representations also constitute actionable material omissions.

¹⁰ BD151795

¹¹ BD150990

¹² BD151323

¹³ BD150355

¹⁴ BD151723

¹⁵ BD150789

¹⁶ BD153129

- “I asked if I decided to transfer after rec associates degree would all credits transfer to any college? I was told, an associates is an associates no matter where it comes from.”¹⁷
- “Brian Walker admissions representative had stated that if I wanted to get a Masters degree from another college that my credits will transfer with no problem as FMU (now Everest) is accredited university.”¹⁸
- “I asked if I could transfer my credits to get my Bachelor's degree after earning my Associate's and i was told they would transfer but I would receive a discount if i was to get my Bachelor's with them. They told me i could get my Master's anywhere because my credits would transfer. I asked for specific schools which would take the credits and I was told they don't see why anyone wouldn't take them . . . I was going to pursue my Master's but found out my credits do not transfer.”¹⁹

In all of the above examples, the school explicitly misrepresented the transferability of its credits to the student.

Applicants also state that the school represented general transferability via statements that Everest was “accredited” or “fully accredited.” Such implied representations of transferability are supported by the Harkin Report, as well as the Corinthian telephone audits and recordings discussed below. That this “accreditation” tactic, in context, created a strongly implied representation of transferability is illustrated by the fact that students who were unable to transfer their credits believe that Everest lied about being accredited at all (*italics added*):

- “FLORIDA METROPOLITAN UNIVERSITY-ONLINE (FMU-ONLINE) *LIED BY STATING THAT THEY WERE AN ACCREDITED UNIVERSITY WHEN IN FACT THEY KNOW THEY WERE NOT . . . THE MISCONDUCT FROM FMU-ONLINE PREVENTED ME TO TRANSFER ANY OF THE CLASSESS I HAD TAKEN THERE, TO BE TRANSFERABLE.*”²⁰
- “Before i applied for the loan i was told my credit can be tranfer if need when i was attending class *i found out thats not true they [sic] are not a accredited school.*”²¹
- “*I DID NOT KNOW THAT THE SCHOOL WAS NOT PROPERLY ACCREDITED. CREDIT WERE NOT TRANSFERABLE*”²²
- “Everest University misrepresented their accreditation I was told during my school interview that the school was accredited, *and later found out once I applied to other colleges that the school was not accredited.*”²³
- “I actually went to Valencia once and they told me that they [Everest] are not accredited, thus I'd have to start all over again.”²⁴
- “Throughout the course, there was speculation that the school was not accredited, but they continuously posted fake documents around the school claiming that they were accredited and that any credits we received would transfer over without any problem.”²⁵
- “I was told that credits would transfer to other schools offering the same classes but when i tried to transfer after having ear problems i was told that *NONE of my credits could transfer because FMU [later Everest] was not an accredited school.*”²⁶

¹⁷ BD153757

¹⁸ BD150139

¹⁹ BD150545

²⁰ BD154282

²¹ BD153723

²² BD152794

²³ BD152222

²⁴ BD150941

²⁵ BD150786

- “I am struggling to have my credits transfer to Southern New Hampshire University. They told me that since Everest is closing that it may be difficult to get any credits to transfer *because Everest is not an accredited institution. Everest told me that they were accredited.*”²⁷

Whether students allege an explicit misrepresentation about transferability (“I was told all my credits would transfer”) or a strongly implied misrepresentation (“I was told the school was accredited, but then I found out my credits wouldn’t transfer”), the student statements are unprompted,²⁸ specific, and consistent across a span of years.

For example, of the 303 claims reviewed to date at the Everest-Brandon campus, 52 include the allegation that admissions personnel made express representations regarding transferability (examples of which were quoted above) and an additional 6 allege an implied misrepresentation (tying accreditation to transferability).²⁹ The student statements are consistent regarding the representations made, including details such as specific schools that would accept Everest credits, or the suggestion that credits earned in Everest’s paralegal program would enable students to continue on to law school.

The 58 Everest-Brandon transferability claims come from students who attended between 1998 and 2010.³⁰ Corinthian owned and controlled the Everest-Brandon location beginning in 1996, and the first claim alleging a transferability misrepresentation comes from a student who enrolled in 1998. We have transferability claims from this campus for each year from 1998 through 2010, with a spike in the late-2000s. We have fewer claims from earlier years, but those earlier claims bear the same indicia of reliability as the later claims. Significantly, the student statements about the admissions representatives’ misrepresentations exhibit consistency across the span of years:

- 1998: “I attended the school due to the flexible hours and the fact that I was told by the [the school] that my credits in fact would transfer over to other schools.”³¹
- 2000: “I was also told that my credits could transfer to any local college or university that was regionally accredited.”³²
- 2006: “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere or go to law school.”³³
- 2010: “...Also, was told that credits would transfer to any University (not true).”³⁴

The pervasiveness and consistency of the misrepresentation over time at Everest-Brandon corroborate students’ allegations about transferability claims throughout the entirety of Corinthian’s control of the school.

²⁶ BD150315

²⁷ BD152848

²⁸ All of the above student statements came from a variety of different types of applications including the Everest/WyoTech attestation form ED created for JPR claims, various versions of the Debt Collective forms, and narratives in Word documents or the bodies of emails. The majority of these allegations are unprompted—some versions of the Debt Collective form specifically ask about transfer of credits, but others do not, and ED’s attestation form only instructs borrowers to provide “any other information...that you think is relevant.”

²⁹ These figures do not include applications on the Debt Collective form where the applicant only checked the box indicating they were misled about “[t]he fact that my program lacked the required accreditation to allow me to work in my field and/or transfer my credits to another college” without providing any narrative.

³⁰ Review Group 15, from which these sample claims are taken, includes any Everest or WyoTech claim from students who enrolled before 2010. A few claims from students enrolled in 2010 can also be found in the review group.

³¹ BD1617575

³² BD1600530

³³ BD151723

³⁴ BD1613824

Significantly, just as the 58 Everest-Brandon claims corroborate each other, the number of similar allegations at and across multiple other campuses further corroborates students' allegations of transferability representations made by Everest personnel. Across campuses and across years, the similarity of student statements indicates that the misrepresentations were system-wide and, indeed, part of the Corinthian culture, discussed below, of enticing students to enroll at any cost.³⁵

Campus	Applications reviewed	Applications alleging an express or implied transferability representation	%
Everest Brandon	303	58	19
Everest Grand Rapids	46	11	24
Everest Orange Park	36	9	25
Everest Orlando North	45	11	24
Everest Orlando South	157	56	36
Everest Phoenix ³⁶	81	22	27
Everest Pompano Beach	28	10	36
Everest Rochester	53	15	28
Everest Tampa	26	10	38
WyoTech Laramie	18	6	33
TOTAL	793	198	25

The campuses shown above represent the nine Everest campuses, and one WyoTech campus, for which we have the most claims. The campuses are located in five separate states (AZ, FL, MI, NY, and WY) and the total applications reviewed are from the period of time when Corinthian gained control of the campus³⁷ through 2010. Every campus from which we have reviewed a significant number of applications has revealed that between one-fifth and one-third of total applicants allege a misrepresentation about transferability of credits. Just like the Everest-Brandon campus discussed above, the transferability claims from these campuses are distributed roughly evenly throughout the period those campuses were owned and controlled by Corinthian. Most importantly, the review of these claims across campuses and years demonstrates that students are making extremely similar allegations about what the schools said about transferability – whether that student enrolled at Brandon in 1998 or Rochester in 2008.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for every one of the over ninety Everest campuses as unnecessary. The hundreds of claims reviewed corroborate that Everest personnel made representations that credits were generally transferable beginning shortly after Corinthian opened or gained control of a campus.

B. Telephone Scripts, Audits, and Recordings

Not surprisingly, Corinthian's training documents do not contain express misrepresentations about transferability. However, they lay the foundation for abuses by failing to emphasize the non-transferability of credits or other potentially important information and in some cases tacitly encouraging misinformation. For example, in a Corinthian presentation entitled "Overcoming Phone Obstacles" attached to the Harkin Report, Corinthian instructs its admissions representatives to provide limited

³⁵ See discussion below, Section III(C), detailing Corinthian's high-pressure sales techniques and internal emphasis on enrolling as many students as possible whether or not it is in the students' interest.

³⁶ Although Everest Phoenix was a regionally accredited campus, these figures are included for their corroborative value in establishing that Everest personnel regularly made representations regarding transferability.

³⁷ The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The nine campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.

information.³⁸ By encouraging its admissions representatives to listen more and talk less, Corinthian believed it could give the student "limited information that will bring the student into the school."³⁹ Similarly, a training manual for admissions representatives attached to the Harkin Report contains call scripts for admissions representatives.⁴⁰ One section of the script suggests that representatives tell students who ask that credits "will probably not be transferable,"⁴¹ but a later sample conversation instructs the representatives to tell students: "... you'll need to ask the receiving institution that question. I can't tell you what their policy might be because every institution sets their own policy regarding credit transfer."⁴²

However, an internal Corinthian audit shows that even to the extent the scripts accurately described the transferability of Corinthian credits, admissions representatives under pressure to enroll students frequently did not follow them. A 2012 audit of Everest's Online Learning Division – Colorado Springs, Tempe,⁴³ and Tampa (which includes Brandon, South Orlando, and Pompano Beach) – identified substantial failures to provide accurate information regarding the transferability of credits during calls with prospective students. Specifically, representatives for the Colorado Springs campus "failed to or incorrectly mentioned" credit transferability 31% of the time when students asked; at Tempe and Tampa, these errors occurred in 40% of audited calls.⁴⁴ Karen Fleming, a quality assurance and compliance auditor for Corinthian, summed up the inaccurate information on transferability in an April 13, 2012 email to colleagues, stating: "Admissions representative[s] did not inform the student that if they wish to transfer their credits from Everest to another institution, that the acceptance of those credits would be at the judgment of the receiving institution..."⁴⁵

Recordings of phone calls supplied by the Illinois Attorney General further illustrate that Corinthian employees misled potential students to believe that credits would be accepted at other schools. In summaries of 9 out of 29 recorded calls between Everest call center employees and prospective students provided to us by the Illinois Attorney General's office, Everest representatives gave prospective students information about transferability that was either false or technically accurate but misleading.⁴⁶ In one phone call, the representative directly links accreditation to transferability stating: "We are a nationally accredited school. So you can use that almost anywhere you go."⁴⁷ Another representative, after confirming the school was accredited, refused to answer a prospective student's question about transferability.⁴⁸

³⁸ Harkin report, Appendix 25, CoCo Document 3.

³⁹ *Id.* at p. 7.

⁴⁰ Harkin report, Appendix 25, CoCo Document 4.

⁴¹ Harkin report, Appendix 25, CoCo Document 4, pp. 7-8.

⁴² Harkin report, Appendix 25, CoCo Document 4, p. 14.

⁴³ Everest Tempe was one of the regionally accredited campuses in Arizona. While the effect of accreditation on transferability for the AZ campus is not the same as for nationally accredited schools, the fact that representatives for that campus either failed to provide accurate information, or affirmatively provided inaccurate information, regarding transferability between 20% and 40% of the time when observed serves to corroborate allegations that such representations were regularly made regarding other campuses nationwide.

⁴⁴ Quach Decl. Ex. 40, at CCICA156477. After a "corrective action plan" was initiated, those numbers dropped to 18% at Colorado Springs, 20% at Tempe, and 26% at Tampa. See Quach Decl. Ex. 40, at CCICA156454.

⁴⁵ *Id.*

⁴⁶ IL AG "Hot Call" table.

⁴⁷ IL AG; 3333182367_3333182298_ebf49c0853f15387993e156.

⁴⁸ "The school will obviously give you the education and credentials with regard to certification" 24:00 "Are you guys accredited." A: "Absolutely." Student then asked about transfer of credits. She wouldn't answer. IL AG; Second Leg, 3333592713_3333592639_13469370fa1b53e21c997bc8.

II. Summary of Evidence of Falsity of Representation

Three main sources of evidence demonstrate that credits from Everest were not generally transferable to most other schools. The first is the nature of the schools' accreditation. The second is the *Transfer Credit Practices* guide, which admissions officers use to determine how other schools treat a school's credits. The third is a survey we conducted of transfer policies in a few states that had large populations of Everest students. Additionally, public statements by Corinthian executives show that Corinthian was aware that credits from their schools were not generally transferable.

A. Accreditation

Regionally accredited schools generally do not accept transfer credit from nationally accredited schools. Most of the nation's two- and four-year degree-granting post-secondary schools are regionally accredited, while national accrediting agencies accredit career, vocational, and trade schools. Generally, schools that are regionally accredited will not accept credits from nationally accredited schools.

A 2014 study by the National Center for Education Statistics found that 81.4% - 84.3% of students who transfer to, from, or between nationally accredited schools have none of their earned credits transfer (compared to 37% of students transferring between regionally accredited schools),⁴⁹ and that the average student transferring to, from, or between nationally accredited schools lost 83% - 90% of their credits upon transfer (compared to an average loss of 39% for regional to regional transfers).⁵⁰ The California State University system, the largest four-year public university system in the US, does not generally accept credits from *any* institution without regional accreditation.⁵¹ Similarly, major systems in Florida, Georgia, Texas, Minnesota, and Massachusetts only generally accept credits from regionally accredited schools.⁵²

Similarly, a GAO report found that among regionally accredited schools, 63% specified that they accepted credits from *any* regionally accredited school, whereas only 14% specified that they accepted transfer credits from nationally accredited schools;⁵³ less than one percent of post-secondary institutions specified that accreditation was not a factor in their transfer decisions.⁵⁴ Nationally accredited institutions told the GAO that their students "often have difficulty transferring credits and that . . . regionally accredited institutions did not always accept courses taken at the nationally accredited institution."⁵⁵ Nationally accredited institutions reported that they "advised students to assume that credits would not transfer to regionally accredited institutions."⁵⁶

⁴⁹ Simone, S.A. (2014). *Transferability of Postsecondary Credit Following Student Transfer or Coenrollment* (NCES 2014-163). U.S. Department of Education. Washington, DC: National Center for Education Statistics. p. 36

⁵⁰ *Id.* at 37. While the study did not conclude there was a direct link between accreditation status and credit transfer, it did find that accreditation status was a factor in credit transfer. The importance of that "factor" is highlighted in the percentage of transfer credits lost when nationally accredited students attempt to transfer those credits. Moreover, experts in the field consider accreditation to be a major factor in credit transferability. According to Christine Korlin, Ed.D., the "type of accreditation is one of the first considerations, and often the primary consideration, by a receiving institution in reviewing transfer credit." See Expert Rebuttal Report to Expert Report by Dennis M. Cariello in the Matter of *State of Minnesota by its Attorney General, Lori Swanson v. Minnesota School of Business, Inc. et al.* at 4 (July 2015). See also statements of Herman Bounds, Ed.D., Director of Accreditation Group at the Department of Education, referenced in FN 6.

⁵¹ *Transfer Credit Practices*, 2015 Edition

⁵² See "Survey of Two- and Four-Year Schools in Selected States", Section III(C).

⁵³ GAO-06-22, p. 9

⁵⁴ GAO-06-22, p. 9

⁵⁵ *Id.* p. 10

⁵⁶ *Id.*

The fact that regionally accredited schools generally do not accept nationally accredited credits has always been true. The 2005 GAO report treats the issue as the status quo, and not a recent development.⁵⁷ Until the last couple decades, credit transfer between nationals and regionals was a non-issue since, historically, nationally accredited schools offered technical certificates, not degree programs.⁵⁸ However, in the last 15-20 years, more nationally accredited schools have started offering degree programs, and the inability of those credits to transfer has become a larger issue.⁵⁹

Corinthian itself was sufficiently aware of the impact of national accreditation on transferability that it supported various regulatory and/or legislative efforts to require schools to “state that they will not automatically reject credit from nationally accredited institutions.”⁶⁰ In 2007, Corinthian’s VP for legislative and regulatory affairs, Mark Pelesh, stated: “Students are required too often to repeat coursework, pay for something twice, use the public’s resources in terms of federal and state financial aid, and have impediments put in the way to advancing their career objectives... it’s high time we do something that has some regulatory teeth and impact.”⁶¹

B. Transfer Credit Practices of Designated Educational Institutions

The *Transfer Credit Practices of Designated Educational Institutions*, a reference guide published by the American Association of Collegiate Registrars and Admissions Officers, also demonstrates that these credits were not generally transferable as Corinthian frequently told borrowers. It reports the transfer acceptance practices of one major institution in each state, usually the flagship campus of the state university system, regarding credit from institutions in that state. Other schools are not required to follow the reporting school’s policies, but the guide is useful for determining how institutions’ credits are treated generally.

In a review of *Transfer Credit Practices* from the last twenty years,⁶² none of the reporting institutions, outside of Arizona, had a policy of generally accepting credits from Everest. Outside of Arizona, the most favorable policy regarding credits from Everest was one university system that accepted them “on a provisional basis subject to validation as prescribed by the reporting institution”.⁶³ All other reporting institutions either had no official policy or did not normally accept credits from Everest.⁶⁴

⁵⁷ See also <https://www.americanprogress.org/issues/higher-education/report/2015/12/14/127200/booked-on-accreditation-a-historical-perspective>; https://en.wikipedia.org/wiki/Regional_accreditation; El-Kwahas, Elaine (2001) *Accreditation in the USA: Origins, Developments, and Future Prospects* <http://unesdoc.unesco.org/images/0012/001292/129295e.pdf>; Brittingham, Barbara (2009) *Accreditation in the United States: How Did We Get to Where We Are?* <http://online.library.wiley.com/doi/10.1002/he.331/pdf>; <http://www.acics.org/accreditation/content.aspx?id=2258>

⁵⁸ See “Council for Higher Education Accreditation: Transfer and the Public Interest” (Nov. 2000) available at http://www.cher.org/pdf/transfer_state_02.pdf, where, without addressing for-profits specifically, the reports states that “higher education is experiencing a significant change in how students attend college and who provides higher education”; see also “History of Accreditation” available on a major national accreditor’s website at <http://www.acics.org/accreditation/content.aspx?id=2258>.

⁵⁹ Herman Bounds, Ed.D., Director of the Accreditation Group at the Department of Education, confirmed to the BD team via email that it is a standard practice in higher education for regionally accredited schools to not accept nationally accredited school credits. He also confirmed that those policies are a historical norm. See also 2006 Spellings Report (ED report arguing that something needs to be done about credit transfer practices).

⁶⁰ <https://www.insidehighered.com/news/2005/10/19/transfer>

⁶¹ <https://www.insidehighered.com/news/2007/02/26/transfer>

⁶² The 1994-1996, 1996-1998, 1998-2000, 2006, 2009, 2012, and 2015 editions.

⁶³ California State University, Northridge, for certain Everest campuses, but only in 2006 and 2012. Of the 6 Everest campuses from which CSU would accept credits on a provisional basis, credits from 5 of those were limited to “graduate, professional, or technical programs only”. By 2015, CSU Northridge policy for all Everest/WyoTech campuses was “credit not normally accepted”.

⁶⁴ Florida statute allows nationally accredited schools to participate in the Statewide Course Numbering System, which may allow credits taken at those schools to transfer, but for the Everest campuses that participated in the System, “the credentials of

C. Survey of Two- and Four-Year Schools in Selected States

In May 2016, the BD Team also surveyed the transfer policies of two- and four-year schools in three of the states with high numbers of Everest students (FL, GA, and TX), regarding credits earned at Everest. We reviewed the schools' credit transfer acceptance policies available online, emailed admissions officers, and/or spoke directly with admissions officers. None of the state four-year school systems had a policy of generally accepting credits from nationally accredited schools, including Everest.⁶⁵ Most of the two-year community colleges would only accept credits from regionally accredited schools on a general basis (one two-year school in FL and one in TX regularly accepted credits from ACICS schools, including Everest).

Similarly, as part of their investigation into Everest campuses in Massachusetts, MA AGO contacted several two- and four-year schools within commuting distance of the Everest schools. None of the schools normally accepted credits from Everest, with all of the four-year and one of the two-year schools specifying that they only had acceptance policies for regionally accredited schools.⁶⁶ The UMass flagship campus either was not contacted or did not reply, but according to its website, "the following courses generally will not transfer to UMass: Taught by a school which does not have regional academic accreditation at the post-secondary level."⁶⁷

D. Student Accounts

Unsurprisingly, student accounts also show that other institutions of higher learning did not accept credits earned at Everest:

- "I am currently a student at Daytona State College and have been forced to repeat many of the courses I took and paid for at Florida Metropolitan University [Everest Orlando North]. Daytona State does not recognize any of credits earned at FMU, forcing me to repeat them and continue to pay a student loan on worthless education."⁶⁸
- "I tried to enroll at University of Central Florida, Seminole State College and Valencia College. UCF did not even respond to me. SSC and Valencia informed me that they could not accept my credits."⁶⁹
- "I was Told all college credits would transfer, it didn't matter that this college was private, I spoke with a community college advisor and none of these credits transfer."⁷⁰
- "Credits were not transferable. I checked with Western Dakota Tech in Rapid City SD at the time as I felt I was not getting the education I was promised."⁷¹

In some instances, students even lost the majority of credits earned at one Everest campus when they transferred or re-enrolled at another Everest campus. One student writes: "The fact is none of them [credits earned at Tampa] were accepted by Tempe Everest even though it was from their OWN sister

faculty teaching each course are considered in determining the number assigned to the course and the transferability of the course"; those Everest campuses are still listed as "credits not normally accepted".

⁶⁵ University of Florida (Gainesville), University of West Florida, the Georgia State University system, University of Georgia (Athens), University of Texas (Austin), University of Texas (San Antonio), Baylor University, and Rice University. Florida State University (Tallahassee) would accept, and has accepted, Everest credits on a provisional basis, upon review, as noted above.

⁶⁶ MA AGO, Ex. 34

⁶⁷ <https://www.umass.edu/registrar/students/transfer-information/transfer-credit>

⁶⁸ BD131803

⁶⁹ BD1604707

⁷⁰ BD150366

⁷¹ BD155798

school.”⁷² Another student reports: “They told me that I will be able to use my previous credit... but [Everest Orlando South] made me take the class again.”⁷³

This inability to transfer credits to other institutions is consistent both at individual campuses and between campuses during the time they were operated by Corinthian.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for These Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

Under the current borrower defense regulation, students must allege an “act or omission” of their school “that would give rise to a cause of action against the school under applicable State law” to be eligible for relief.⁷⁴ The applicable state law here is California’s UCL, which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. For the following reasons, the cohort of Everest students identified below applying for borrower defense relief predicated on Everest’s transferability misrepresentations: 1) have standing under the California UCL; and 2) are eligible for relief under the “unlawful” and “fraudulent” prongs of the UCL. Moreover, given the lack of value conferred by Everest credits and/or degrees, these students should be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. Everest Students Have Standing Under California’s UCL

Both students who attended Everest programs in California and those who attended campuses in other states have standing under the California UCL. First, students attending Everest programs in California can demonstrate standing under the UCL by alleging that they relied on misrepresentations made by Everest regarding the transferability of Everest course credits. Any person “who has suffered injury in fact and has lost money or property as a result of the unfair competition” has standing to bring a claim under the UCL.⁷⁵ Second, while California statutes do not generally have effect outside of California, “[California] statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California.”⁷⁶ Courts look to “where the defendant does business, whether the defendant’s principal offices are located in California, where class members are located, and the location from which advertising and other promotional literature decisions were made”⁷⁷ when determining whether non-California residents may avail themselves of California’s consumer protection statutes. Corinthian and its subsidiaries, through which it operated Everest schools, had their primary places of business and headquarters in California,⁷⁸ had more campuses in California than any other state,⁷⁹ produced and coordinated marketing and advertising in California,⁸⁰ and developed and promulgated the policies and training materials for their personnel in California.⁸¹ Further, the single

⁷² BD1603868

⁷³ BD155063

⁷⁴ 34 C.F.R. § 685.206(c).

⁷⁵ CAL. BUS. & PROF. CODE §17204.

⁷⁶ *Norwest Mortgage, Inc. v. Super. Ct.*, 72 Cal.App.4th 214, 224-25, 85 Cal.Rptr.2nd 18(Cal.Ct.App. 1999)

⁷⁷ *In re Clorox Consumer Litigation*, 894 F.Supp.2d 1224, 1237 -1238 (N.D.Cal., 2012) (citing *In re Toyota Motor Corp.*, 785 F.Supp.2d 883, 917 (C.D.Cal.2011)).

⁷⁸ CCI Answer CA Amended Complaint ¶¶9-27

⁷⁹ There were 27 Corinthian campuses in California (14 Everest, 3 WyoTech, and 10 Heald). The other states with large numbers of Corinthian campuses were Florida (15 Everest and 1 WyoTech campuses) and Texas (9 Everest campuses).

⁸⁰ Tim Evans interview, WI AG Sutherlin Affidavit Ex. 12 (“Evans said that all advertising was done by corporate.”); Mark Sullivan interview, WI AG Sutherlin Affidavit Ex. 13 (“He [Sullivan] didn’t do any of the marketing. That wasn’t done by the local campuses.”); Deposition of Scott Lester, WI AG Sutherlin Ex. 15 (“Every bit of marketing came out of corporate. Every marketing decision came from corporate.”)

⁸¹ WI Educational Approval Board letters to Everest Milwaukee, WI AG Sutherlin Affidavit, Ex. 10

incoming call facility for prospective Everest students from the throughout the nation was located in California.⁸²

Additionally, former employees report that corporate decision makers based in California directed admissions staff to make misleading statements and engage in various high-pressure sales tactics to increase enrollment:

- “Q: And when the Admissions Reps were making representations to the students about the externships, about the career possibilities, about what life could be, were those accurate representations given the state of the school?
A: *They were the representations that they were given by corporate as part of their -- the way they were told to do the job. Were they accurate?* No.”⁸³
- Call center representatives “were trained to lie.”⁸⁴
- “There is a huge cultural issue at Corinthian Colleges that quietly promotes dishonesty & fraud at all the Everest campuses. *This culture of dishonesty & intimidation is generated by the corporate office that has spread all over the company like cancer.*”⁸⁵

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, and that decisions and policies made by its California based corporate leadership harmed Everest students across the nation – Everest students from campuses nationwide have standing under the California UCL.

B. Everest Students Alleging Transfer of Credits Misrepresentations Are Eligible for Relief Under the “Unlawful” and “Fraudulent” Prongs of the UCL

California’s UCL prohibits, and provides civil remedies for, unfair competition, which it broadly defines to include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”⁸⁶ Here, Everest’s misrepresentations regarding the transfer of credits constitute “unlawful” and “fraudulent” business practices under the UCL.⁸⁷

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.”⁸⁸ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁸⁹

Corporate misrepresentations like those Everest made regarding transferability are prohibited by a number of state and federal laws. In particular, Everest’s misrepresentation of the transferability of its

⁸² Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

⁸³ Deposition of Scott Lester, Everest Milwaukee Director of Admissions, later President. WI AG, Ex. 15

⁸⁴ Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013); taken by CA AG Office.

⁸⁵ Letter from Anonymous former Everest employee to ACCSC Commissioner, Ex. 54 of CA AG Motion for Default at CCICA179681

⁸⁶ *Id.*; *Kwikset Corp. v. Superior Court*, 51 Cal. App. 4th 310, 320 (2011); see also *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999).

⁸⁷ Although not discussed here, Everest’s transferability misrepresentations may also be unfair competition under two other prongs of Section 17200: “unfair, deceptive or untrue advertising” and “unfair...business act or practice.” Courts typically fail to distinguish the false advertising prong from the fraudulent business practices prong; this memorandum focuses on the fraudulent business practices prong. See Stern, *Business and Professional Code* § 172000 Practice at 3:212 (2016).

⁸⁸ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

⁸⁹ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

credits violates the prohibition against deceptive advertising in the Federal Trade Commission Act ("FTC Act").⁹⁰ Determining whether an advertisement violates the FTC Act involves a three-step inquiry considering: "(i) what claims are conveyed in the ad, (ii) whether those claims are false, misleading, or unsubstantiated, and (iii) whether the claims are material to prospective purchasers."⁹¹

As described above, Everest's representations about the transferability of its credits were false, erroneous and misleading. Everest's transfer of credits representations misled students about the value of the credits they would be earning at Everest. Based on the school's misrepresentations, individuals considering enrolling at Everest would have the false belief that Everest credits would not only allow them to obtain an Everest degree, but would also provide them with credits generally transferable to any other institution.

A false or misleading misrepresentation violates the FTC Act if it is material. To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁹² Everest's transferability representations meet the FTC Act's materiality threshold, because borrowers relied on the promise of transferable credits when making their enrollment decision. In applications submitted to the Department,⁹³ these borrowers have specifically identified false representations regarding transferability as some of the misconduct giving rise to their claim. Many students' applications specifically state that they intended to continue their educations at four-year schools.⁹⁴ For other students intent on beginning a career as soon as possible, the transferability of credits and ability to continue academically offered an alternative if they were unable to find a job immediately.⁹⁵ Finally, students considered the transferability of credits earned at an institution to be an indicator of the quality and value of that institution's instruction.⁹⁶

⁹⁰ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

⁹¹ *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 490 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 1839 (2016) (citing cases).

⁹² *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁹³ Although many of these applicants submitted statements signed under penalty of perjury, some applicants submitted their materials prior to the publication of the Department's form and therefore made unsworn statements.

⁹⁴ "They claimed that all credits earned would be accepted by any other colleges... I wanted to continue my education and perhaps attend law school but was told that a majority, if not all of my credits from Everest, would not be accepted." BD150202; "I was told that after completing my AA in Forensics I would be able to take the credits and pursue a Bachelors degree in Forensic Psychology which would double/triple my future earnings..." BD150303

⁹⁵ "After graduating and not being able to get into the career I had studied for, I tried transferring credits and could not find schools that wanted to accept them." BD151251; "One of my first questions once I enrolled in Everest University was regarding the credibility and accreditation of the school. I wanted to make sure that upon graduation, I would be able to find a job and/or be able to further my education using Everest as a foundation." BD1602822

⁹⁶ "Students who may not even be interested in transferring credits nonetheless will ask us whether other institutions will accept their credits," [Corinthian Executive Vice President for Legislative and Regulatory Affairs Mark] Pelesh said. "What they're really asking is, is this a legitimate institution? Is it part of the legitimate postsecondary higher education world?" And policies

These students' reliance on such claims is reasonable given the importance of transferability to students, as evidenced by the plight of many Everest students after the institution closed. Thus, Everest's transferability misrepresentations constitute unlawful business practices under the UCL.

2. The Fraudulent Prong

Everest's misrepresentations regarding the transferability of its credits also are a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for Everest students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁹⁷ The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁹⁸ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁹⁹ As noted, the transferability representations that Everest made to students were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged.¹⁰⁰ However, for a consumer who was deceived into purchasing a product¹⁰¹—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions¹⁰² of the entity.¹⁰³

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"¹⁰⁴ the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."¹⁰⁵

As discussed above, the evidence shows that students relied on Everest's transferability representations when they enrolled.¹⁰⁶ Indeed, express or implied claims like those made by Everest about

that openly distinguish between credits earned at for-profit and nonprofit colleges -- turning down their nose at the former -- send a signal that answers that question No, he said." <https://www.insidehighered.com/news/2007/02/26/transfer>

⁹⁷ See *Bank of the West*, 2 Cal. 4th at 1254.

⁹⁸ CAL CIV. C. § 1709.

⁹⁹ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

¹⁰⁰ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

¹⁰¹ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

¹⁰² Everest's implied representations of transferability are also actionable as deceptive half-truth omissions. A half-truth omission occurs when an affirmative representation is misleading in the absence of material qualifying information. See Deception Policy Statement, 103 F.T.C. at 176; *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 532 (S.D.N.Y. 2000) ("Failure to disclose pertinent information is deceptive if it has a tendency or capacity to deceive."). An advertisement can be deceptive because it failed to disclose material information even if it does not contain any false statements. *FTC v. Medical Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008). Here, Everest's affirmative statements about being "accredited" were deceptive absent further information distinguishing between regional and national accreditation and explaining the impact of national accreditation on transferability.

¹⁰³ See, e.g., *Daghlian v. DeVry University, Inc.*, 461 F.Supp.2d 1121, 1156 (C.D. Cal. 2006) ("Although Daghlilian does not allege that he attempted to transfer the credits to another educational institution, or that he was forced to begin his education anew at another institution, he does assert that he enrolled at DeVry and incurred \$40,000 in debt '[i]n reliance on' defendants' misrepresentations and omissions about the transferability of credits. This sufficiently alleges that Daghlilian personally suffered injury as a result of defendants' allegedly false and/or misleading advertising and unfair business practices.").

¹⁰⁴ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

¹⁰⁵ *Id.* (internal quotation marks omitted).

¹⁰⁶ Because deception occurs at the time of decision, or for Everest students, at the time of enrollment, it is sufficient for Everest students to say that they chose to enroll based upon a transferability misrepresentation, regardless of subsequent efforts to transfer.

the transferability of credits are presumptively material.¹⁰⁷ Moreover, under the UCL, a showing of materiality gives rise to “a presumption, or at least an inference, of reliance.”¹⁰⁸ Here, statements by borrowers support the presumption that promises of transferable credits were a substantial factor in their decision to enroll.

C. Weak Disclaimers In Some of Everest’s Written Materials Do Not Cure Its False and Misleading Transferability Representations

Everest’s representations regarding its students’ ability to transfer were false and misleading, despite the school’s limited disclaimers in some written materials. In many instances enrollment agreements and course catalogs contained technically accurate information about transferability, but such written information did not change the overall impression created by the oral representations.

If a student examined the enrollment agreement, the student would have to read through four pages of fine print to find a box entitled “Enrollment Agreement” and subtitled “The Student Understands.”¹⁰⁹ Midway through that box of fine print, item number 5 provides some information on transferability. That item is not highlighted or bolded in any way. The text cautioned students that Corinthian could not *guarantee* the transferability of credits to another school, but did not go so far as to cast doubt on the general transferability of Corinthian credits.¹¹⁰ The agreement then continues on with two additional pages of fine print disclaimers. Everest’s course catalogs generally contained limiting language similar to the enrollment agreements, and that language was similarly buried.¹¹¹

These disclaimers do not cure the falsity of Everest’s oral promises regarding transferability. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.¹¹² The California Supreme Court has also held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.¹¹³

The written disclaimers were hidden in text and provided only after admissions representatives orally promised general transferability. Moreover, here, Everest’s disclaimers were particularly ineffective when considered in the context of Corinthian’s unsophisticated student population and high-pressure admissions practices.

¹⁰⁷ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and “that even if they were implied claims, they were material because the claims relate to the efficacy of the product.”); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

¹⁰⁸ *In re Tobacco II Cases*, 46 Cal. 4th at 298.

¹⁰⁹ See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

¹¹⁰ See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement: “The School does not guarantee the transferability of credits to any school, university or institution. The student should contact a receiving institution regarding transfer of credit from The School prior to enrollment.” MA AGO Ex. 9 at AGO-MA02062

¹¹¹ Most course catalogs stated that the acceptance of credits was at the discretion of the receiving institution. We found one outlier example, the Everest Miami course catalog, which declared Everest credits were not generally transferable.

¹¹² See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

¹¹³ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) (“the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant’s practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.”).

Corinthian documents show that the school sought to enroll vulnerable people who had “low self-esteem,” were “stuck, unable to see and plan well for the future” and “isolated,” had “few people in their lives who care about them,” and were “impatient, want quick solutions.”¹¹⁴ Corinthian’s CEO, in a letter to Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”¹¹⁵ Corinthian advertised on daytime TV,¹¹⁶ targeting the un- or under-employed. In some instances, Corinthian personnel actively recruited homeless individuals as students, despite the additional challenges they would face in completing their studies, even offering monetary incentives to take campus tours.¹¹⁷ In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Moreover, the nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students were rushed through the enrollment process at Corinthian and were not provided an opportunity to read and digest the enrollment agreement.¹¹⁸ As the Harkin Report found, this practice stemmed from the emphasis on growth: “Enrollment growth is critical to the business success of for-profit education companies... In order to meet revenue and profit expectations, for-profit colleges recruit as many students as possible to sign up for their programs.”¹¹⁹ The report quotes a 2005 Corinthian hiring manual as stating: “remember that this is a sales position and the new hire must understand that from the very beginning.”¹²⁰ At Corinthian, internal documents make clear that recruiters were not trained or expected to advise students,¹²¹ but to sell the program – to “enroll your brains out.”¹²²

Many Everest students state that they did not choose their own classes¹²³ or sometimes even their own program of study, making it even less likely they would see disclosures in course catalogs.¹²⁴ These student reports back up the Harkin report’s conclusion that Corinthian recruiters were effectively salespersons, with the goal to enroll the student in whichever classes or programs made the most sense for

¹¹⁴ CA AG Quach Decl. Ex 113.

¹¹⁵ Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).

¹¹⁶ CA AG Quach Decl. Ex 113.

¹¹⁷ CA AG Decl. of Holly Harsh.

¹¹⁸ “After meeting with an Everest representative in October 2011, I wished to discuss my options with family but I felt pressure to enroll on the spot. I wanted a career in the medical field and the representative told me to act now since I was already there. They rushed the whole enrollment process.” Affidavit of D’Anne Coffie MA Ex. 08 at AGO-MA01891; “The tour of the school felt very rushed, as if the school did not want to give the people on the tour time to make a decision.” Affidavit of Courtney Petrie, MA Ex. 08 at AGO-MA01914; “They were like used car salesmen. They made sure I signed up before I walked out the door during my first visit, even though I only went there for a tour.” Affidavit of Matisha Chao MA Ex. 08 at AGO-MA01887

¹¹⁹ Harkin Report, p. 387.

¹²⁰ *Id.*

¹²¹ Harkin Report, p. 387.

¹²² Deposition of Scott Lester, Former Admissions Director of Everest Milwaukee, WI AG, Sutherland Affidavit Exhibit 15, p. 49

¹²³ “I ended up taking courses that were not even applicable to my degree or not necessary for me to complete my degree. In other words, I paid additional for classes I didn’t really need to take.” BD150455; “My student advisor when I first got started was explaining how classes were available for a few hundred dollars for the courses. While there may have been some for that price, not many were the classes they said I had to take.” BD150813

¹²⁴ “I went to school from Jan 2011 to March 2014 and was enrolled in the Associates Billing and Coding and then they convinced me to move to a BS in Health Care Administration... As I approached my end of my degree I ran out of money and realized they had made me take classes I did not need in my program and had 4 classes to finish and I was stuck...” BD151750; “They totally misled me when I was requesting to sign up for their Crime Scene Investigator program. My student advisor had actually put me into their Criminal Justice Program instead and the mistake wasn’t figured out until it was past their drop/add time frame of classes so I was stuck taking classes that had NOTHING to do with my actual program I wanted to study. They told me there was nothing they could do and I had to just wait til the time frame of starting their next term.” BD153136

the school, not the student. Students were not provided the time to read any written materials because the students' interests were not at the heart of the transaction.¹²⁵

Finally, the fact that 198 of the 793 (25%) Everest/WyoTech claims reviewed to date allege that Corinthian represented that credits would generally be accepted at other schools, with no mention of any written disclaimer, strongly supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population Corinthian targeted, and the high pressure sales tactics and oral representations we know Corinthian personnel to have employed, these disclaimers do not offset the net impression of the school's misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following Everest and WyoTech Laramie students alleging transfer of credits claims should be eligible for relief:

1. Any claimant who attended a nationally accredited Everest campus or WyoTech's Laramie campus and who:
 - a. alleges that Everest expressly represented that credits earned there would be generally transferable; or
 - b. alleges that Everest misrepresented the nature and/or value of their accreditation, in a manner that implied that their credits were generally transferable.
2. Borrowers who allege that their credits did not transfer, but do not allege a corresponding misrepresentation, will not be eligible for relief on this basis.
3. Eligible borrowers will be limited to students first enrolling after Corinthian acquired the campus in question.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act.¹²⁶ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.¹²⁷

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital* approach and found that a restitution model that aims to "restore the status quo by returning to

¹²⁵ "I was also provided with a course catalog/program disclosure statement stating in writing that the placement rate was 72%. These written materials were provided only after I had signed up." MA AGO Ex. 03 at AGO-MA00180

¹²⁶ See, e.g., *Makoff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

¹²⁷ See, e.g., *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include "the full amount lost by consumers rather than limiting damages to a defendant's profits"); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) ("The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices."); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) ("restoration of the victims of [defendant's] con game to the status quo ante" by use of defendant's gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-cv-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.¹²⁸

However, nothing in the borrower defense statute or regulation requires the Department to apply state law remedies when reviewing a borrower’s claim. The only statutory limit on the Secretary’s ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan.¹²⁹

Indeed, under the current regulation, while a claimant must allege an act or omission that would “give rise to a cause of action” under “applicable state law” in order to be eligible for BD relief, the rule does not direct the Department to award relief to a claimant based on state law principles of restitution or damages. Instead, the borrower defense regulation clearly provides that the Secretary has discretion to fashion relief as suited to the facts of a particular case:

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances [including reimbursement to the borrower of amounts paid towards the loan].¹³⁰

Moreover, the Supreme Court has recognized that, when an agency is fashioning “discretionary relief,” such decisions “frequently rest upon a complex and hard-to-review mix of considerations,” and therefore, “for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency.”¹³¹

The D.C. Circuit has also consistently recognized the “long-standing principle” that federal agencies must be afforded particularly wide latitude in fashioning remedies consistent with the statutes they are charged with administering. An agency’s discretion is, “if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of ... remedies.”¹³² Thus, while California and FTC Act case law is instructive as to the quantum of relief to be provided, the Department is not constrained by that authority.

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Everest education. See *Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). First, if a student cannot generally transfer credits, a chief value conferred by such credits is greatly diminished.

Second, and perhaps more importantly, the Department has found that Everest and its parent company Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its

¹²⁸ *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

¹²⁹ Section 455 of Title IV of the Higher Education Act, 20 U.S.C. § 1087e(h).

¹³⁰ 34 C.F.R. § 685.206(e)(2).

¹³¹ *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 621 (1966).

¹³² *Fallbrook Hosp. Corp. v. N.L.R.B.*, 785 F.3d 729, 735 (D.C. Cir. 2015) (internal quotations and citations removed) (rejecting a challenge to the National Labor Relations Board’s decision to require a hospital to pay for a nurse’s unions full costs for negotiating a labor agreement); see also *U.S. Postal Serv. v. Postal Regulatory Comm’n*, 747 F.3d 906, 910 (D.C. Cir. 2014) (approving a remedy order by the Postal Regulatory Commission requiring the U.S. Postal Service to reduce its rates for certain mailers); *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1216 (D.C. Cir. 2009) (“When FERC is fashioning remedies, we are particularly deferential.”); *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 334 (D.C. Cir. 2006) (approving the FCC’s decision to apply an administrative order retroactively).

accreditation.¹³³ Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest education has been severely limited.

Borrower defense applications confirm the lack of value of an Everest education as many Everest students report that their coursework from Everest has been an impediment rather than an asset as they seek employment. For example, one student reports: "I was only working part time when I was attending school and this degree has done nothing to help me obtain better employment. I am also embarrassed to even put this on my resume because any potential employer who looks this school will discover it was a fraud."¹³⁴ Another reports: "I cannot find a job using my degree. I find one faster if I leave the fact that I didn't go to college at all. People just laugh in my face about Everest saying that it is not a 'real school.'"¹³⁵ Yet another student states: "Employers will not touch me. After graduating I posted a resume online. I did not receive any responses until I removed Everest Online from my resume."¹³⁶

Finally, awarding full relief to students who make transferability claims is consistent with the Department's approach to providing relief to Corinthian students seeking BD relief on the basis of false job placement rates. Indeed, the Department granted full relief to students who alleged that they relied on Corinthian job placement rate representations, without offsetting the relief based on any value that students may have received by attending Corinthian. Given the Department's approach to date, it would be inequitable to limit the relief of students who allege transferability claims while providing full relief to those students who qualify for job placement rate relief.

In sum, in these circumstances, and consistent with the Department's prior actions related to Corinthian, it is appropriate to award eligible borrowers full relief, subject to reduction for borrowers affected by the statute of limitations.

¹³³ See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); *see also* Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that "Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur" and that the school's job placement rates were based on "CCI-designed programs through which Everest Decatur paid employers to hire its graduates" for short time periods in order to inflate placement rates).

¹³⁴ BD1614100

¹³⁵ BD1602593

¹³⁶ BD151191

ARCHIVED INFORMATION

Department of Education and Attorney General Kamala Harris Announce Findings from Investigation of Wyotech and Everest Programs

The findings will be referred to Special Master Joe Smith to inform debt relief process for former Corinthian students

NOVEMBER 17, 2015

Contact: Press Office, (202) 401-1576, press@ed.gov (<mailto:press@ed.gov>)

After analyzing several years of job placement rates reported by Corinthian College's Wyotech and Everest programs, along with evidence provided by California Attorney General Kamala Harris, today, the U.S. Department of Education is announcing the results from the joint investigation which concluded the programs misrepresented their placement rates to enrolled and prospective students.

The findings from this investigation apply to Everest and Wyotech locations in California, as well as Everest University online programs based in Florida, and add to the existing findings concerning programs at Heald College – which were also a part of the joint investigation with Attorney General Harris's office.

"I commend Attorney General Kamala Harris and her team for their collaboration with our team to help defrauded Corinthian students receive the relief they are entitled to," said U.S. Secretary of Education Arne Duncan. "The results of our joint investigation will allow us to get relief to more students, more efficiently. Helping wronged students is much easier when everyone – Congress, state attorneys general, accreditors, authorizers and the Department – does their part to protect students and works together. Our team welcomes help from anyone who wants to follow her lead."

The Department's findings apply to Corinthian campuses that served approximately 85,000 Wyotech and Everest students. Earlier this year, [the Department created an expedited debt relief process \(http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges\)](http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges) for Heald students who attended programs with misstated placement rates. The Department will refer these findings to Joseph Smith, the special master in charge of borrower defense, who will work to make these findings actionable under the borrower defense process. In the meantime, the Department's investigation of the Corinthian schools will continue.

"Corinthian preyed on vulnerable students who are now buried under mountains of student debt," said Attorney General Harris. "Today's joint investigation findings will expand the pool of Corinthian students eligible for streamlined student loan relief options, helping them rebuild their lives and pursue a brighter future. I thank the Department of Education for joining my office to keep Corinthian accountable for their actions and providing debt relief to students who were misled."

Holding Corinthian Colleges Accountable

In August 2012, after receiving of complaints about Corinthian's placement rates and other compliance issues, the Office of Federal Student Aid (<http://www2.ed.gov/about/offices/list/rsa/index.html>) placed all eligibility actions involving mergers, adding new programs, locations or to increase scope of Title IV participation for the institution on hold.

In 2013, Attorney General Harris filed a lawsuit against Corinthian Colleges, Inc. for false advertising and deceptive marketing targeting vulnerable, low-income students and misrepresenting job placement rates to potential and current students, investors and accrediting agencies.

In January 2014, the Department placed Corinthian on heightened cash monitoring after it repeatedly failed to comply with federal regulations. Since day one, the Department has acted to hold Corinthian accountable and ensured students pursuing their education had the opportunity to pursue their career and educational goals with minimal disruption.

In addition to placing the company on heightened cash management, the Department also required the company to sell or close all of its programs, keep students informed of their options and establishing an independent monitor to oversee the company's wind down.

The majority of Corinthian's campuses were purchased by the nonprofit Zenith Education Group, which voluntarily agreed to implement a series of conduct provisions, which included the hiring of an independent monitor to ensure the program operates up to the Department's standards, an across the board tuition cut, and the elimination of poor-performing programs.

In February 2015, the Consumer Financial Protection Bureau (CFPB) and the Department secured more than \$480 million in forgiveness for borrowers who took out Corinthian College's high-cost private student loans. In April 2015, shortly after receiving a \$30 million fine for misrepresentation its job placement rates for the Heald brand, Corinthian announced that it permanently shutting down.

Actions Taken To Protect Students From Abusive For-Profits

Despite Congress' pushback against holding for-profit institutions and career colleges accountable, the Department has taken unprecedented steps to protect students and provide them with opportunities for a high-quality, affordable education that prepares them for their careers, including:

- creating Gainful Employment rules to protect students and taxpayers (<http://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>) and ensure students receive an education that leads to good job prospects;
- strengthening oversight and compliance through inter-agency and Department teams focused on monitoring for-profit institutions;
- announcing a negotiated rulemaking committee to improve the current borrower defense regulation, which will commence in January 2016 ;
- protecting military service members, veterans, and their families from predatory actions by for-profit colleges by strengthening the 90/10 rule;
- announcing executive actions and legislative proposals to strengthen its oversight (<http://www.ed.gov/news/press-releases/department-education-advances-transparency-agenda-accreditation>) of schools and accreditors.

Debt Relief Process for Former Corinthian Students

Following the June 2015 announcement from the Department of Education (<http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>) that groups of students who attended Heald Colleges, a subsidiary of Corinthian Colleges, Inc., would be eligible for a streamlined form of student loan relief, Attorney General Harris announced a tool to help former Corinthian students in California.

Former Corinthian students can learn more about debt relief by visiting <http://oag.ca.gov/corinthian> (<http://oag.ca.gov/corinthian>) and www.studentaid.gov/Corinthian (<http://www.studentaid.gov/Corinthian>).

Recalculated Placement Rates for Everest University Online Programs

These recalculated placement rates are based on the investigation and analysis of CCI's records. The recalculated rates correct for records that purported to justify placement rates but that the Department found to be false, materially incomplete or otherwise inaccurate.

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest University	Brandon	Accounting (Associate)	7/1/2010[1]	92%	12%	-80%
Everest University	Brandon	Accounting (Bachelor)	7/1/2010[1]	83%	72%	-11%
Everest University	Brandon	Business (Associate)	7/1/2010[1]	95%	14%	-81%
Everest University	Brandon	Business Administration (Master)	7/1/2010[1]	93%	87%	-6%
Everest University	Brandon	Computer Information Science (Associate)	7/1/2010[1]	71%	8%	-64%
Everest University	Brandon	Criminal Justice (Associate)	7/1/2010[1]	61%	7%	-55%
Everest University	Brandon	Criminal Justice (Bachelor)	7/1/2010[1]	73%	14%	-59%
Everest College	Brandon	Medical Assistant (Associate)	7/1/2010[1]	63%	4%	-59%
Everest University	Orlando South	Business Administration (Associate)	7/1/2010[1]	98%	85%	-13%
Everest University	Orlando South	Massage Therapy (Diploma)	7/1/2010[1]	44%	30%	-14%
Everest University	Orlando South	Paralegal (Associate)	7/1/2010[1]	64%	50%	-14%
Everest University	Pompano Beach	Accounting (Bachelor)	7/1/2010[1]	100%	90%	-10%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest University	Pompano Beach	Business Administration (Master)	7/1/2010[1]	100%	93%	-8%
Everest University	Pompano Beach	Criminal Justice (Bachelor)	7/1/2010[1]	63%	50%	-13%
Everest University	Pompano Beach	Medical Assistant (Diploma)	7/1/2010[1]	68%	41%	-27%
Everest University	Orlando South	Accounting (Associate)	7/1/2011[2]	77%	53%	-24%
Everest University	Orlando South	Business (Bachelor)	7/1/2011[2]	92%	84%	-8%
Everest University	Orlando South	Business Administration (Master)	7/1/2011[2]	92%	74%	-18%
Everest University	Orlando South	Criminal Investigations (Associate)	7/1/2011[2]	29%	26%	-3%
Everest University	Orlando South	Criminal Justice (Associate)	7/1/2011[2]	65%	59%	-6%
Everest University	Orlando South	Homeland Security (Bachelor)	7/1/2011[2]	63%	50%	-13%
Everest University	Orlando South	Massage Therapy (Diploma)	7/1/2011[2]	43%	28%	-15%
Everest University	Orlando South	Medical Insurance Billing and Coding (Associate)	7/1/2011[2]	46%	43%	-2%
Everest University	Orlando South	Paralegal (Associate)	7/1/2011[2]	46%	44%	-3%
Everest University	Orlando South	Paralegal (Bachelor)	7/1/2011[2]	61%	56%	-6%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest University	Pompano Beach	Business Administration (Master)	7/1/2011[2]	100%	94%	-6%
Everest University	Pompano Beach	Computer Information Science (Associate)	7/1/2011[2]	67%	56%	-11%
Everest University	Pompano Beach	Criminal Justice (Bachelor)	7/1/2011[2]	69%	58%	-10%
Everest University	Pompano Beach	Criminal Justice (Master)	7/1/2011[2]	82%	76%	-6%
Everest University	Pompano Beach	Pharmacy Technician (Diploma)	7/1/2011[2]	30%	25%	-6%
Everest University	Orlando South	Accounting (Bachelor)	7/1/202[3]	80%	74%	-6%
Everest University	Orlando South	Applied Management (Bachelor)	7/1/202[3]	100%	86%	-14%
Everest University	Orlando South	Business (Associate)	7/1/202[3]	85%	77%	-8%
Everest University	Orlando South	Business Administration (Master)	7/1/202[3]	83%	78%	-4%
Everest University	Orlando South	Criminal Investigations (Associate)	7/1/202[3]	37%	30%	-6%
Everest University	Orlando South	Criminal Justice (Associate)	7/1/202[3]	57%	47%	-10%
Everest University	Orlando South	Criminal Justice (Bachelor)	7/1/202[3]	76%	61%	-15%
Everest University	Orlando South	Homeland Security (Bachelor)	7/1/202[3]	65%	59%	-6%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest College	Alhambra	Pharmacy Technician (Diploma)	7/1/2010[1]	73%	65%	-8%
Everest College	Anaheim	Dental Assistant (Diploma)_Evening	7/1/2010[1]	88%	76%	-12%
Everest College	Anaheim	Massage Therapy (Diploma)_Day	7/1/2010[1]	95%	92%	-3%
Everest College	Anaheim	Massage Therapy (Diploma)_Evening	7/1/2010[1]	95%	93%	-2%
Everest College	Anaheim	Medical Assistant (Diploma)_Day	7/1/2010[1]	83%	73%	-10%
Everest College	Anaheim	Medical Assistant (Diploma)_Evening	7/1/2010[1]	84%	72%	-12%
Everest College	Anaheim	Medical Insurance Billing and Coding (Diploma)_Evening	7/1/2010[1]	82%	62%	-20%
Everest College	City of Industry	Business Management/ Administrative Assistant (Diploma)	7/1/2010[1]	88%	70%	-18%
Everest College	City of Industry	Dental Assistant (Diploma)_10	7/1/2010[1]	100%	75%	-25%
Everest College	City of Industry	Dental Assistant (Diploma)_8	7/1/2010[1]	88%	74%	-14%
Everest College	City of Industry	Massage Therapy (Diploma)_11	7/1/2010[1]	93%	90%	-3%
Everest College	City of Industry	Massage Therapy (Diploma)_9	7/1/2010[1]	97%	79%	-18%
Everest College	City of Industry	Medical Assistant (Diploma)_8	7/1/2010[1]	75%	69%	-6%
Everest College	City of Industry	Medical Insurance Billing and Coding (Diploma)	7/1/2010[1]	72%	53%	-19%
Everest College	City of Industry	Pharmacy Technician (Diploma)_8	7/1/2010[1]	69%	61%	-8%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest College	Everest Hayward	Massage Therapy (Diploma)	7/1/2010[1]	61%	50%	-11%
Everest College	Everest Hayward	Medical Administrative Assistant (Diploma)	7/1/2010[1]	59%	55%	-4%
Everest College	Everest Hayward	Medical Assistant (Diploma)	7/1/2010[1]	50%	45%	-5%
Everest College	Everest Hayward	Medical Insurance Billing and Coding (Diploma)_Day	7/1/2010[1]	48%	45%	-3%
Everest College	Everest San Francisco	Dental Assistant (Diploma)_8	7/1/2010[1]	91%	82%	-9%
Everest College	Everest San Francisco	Massage Therapy (Diploma)	7/1/2010[1]	73%	65%	-8%
Everest College	Everest San Francisco	Medical Assistant (Diploma)_10	7/1/2010[1]	71%	67%	-4%
Everest College	Everest San Francisco	Medical Assistant (Diploma)_8	7/1/2010[1]	75%	69%	-6%
Everest College	Everest San Francisco	Pharmacy Technician (Diploma)_10	7/1/2010[1]	86%	71%	-15%
Everest College	Everest San Francisco	Pharmacy Technician (Diploma)_8	7/1/2010[1]	72%	67%	-5%
Everest College	Everest San Jose	Dental Assistant (Diploma)	7/1/2010[1]	90%	84%	-6%
Everest College	Everest San Jose	Massage Therapy (Diploma)	7/1/2010[1]	100%	87%	-13%
Everest College	Everest San Jose	Medical Administrative Assistant (Diploma)	7/1/2010[1]	81%	75%	-6%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest College	Everest San Jose	Medical Assistant (Diploma)	7/1/2010[1]	74%	62%	-12%
WyoTech	Fremont	Applied Automotive Technology - Advanced Diagnostics Concentration (Diploma)	7/1/2010[1]	80%	76%	-4%
WyoTech	Fremont	Applied Automotive Technology (Diploma)	7/1/2010[1]	81%	71%	-10%
WyoTech	Fremont	Automotive Technology/ Concentration in Automotive Diagnostics (Associate)	7/1/2010[1]	97%	83%	-14%
WyoTech	Fremont	Motorcycle Technician (Diploma)_11	7/1/2010[1]	71%	69%	-2%
WyoTech	Fremont	Motorcycle Technology (Diploma)_17	7/1/2010[1]	75%	71%	-4%
WyoTech	Fremont	Plumbing Technology (Diploma)	7/1/2010[1]	76%	73%	-3%
Everest College	Gardena	Dental Assistant (Diploma)_10	7/1/2010[1]	93%	75%	-18%
Everest College	Gardena	Dental Assistant (Diploma)_8	7/1/2010[1]	72%	57%	-15%
Everest College	Gardena	Massage Therapy (Diploma)_9	7/1/2010[1]	99%	93%	-6%
Everest College	Gardena	Medical Assistant (Diploma)_10	7/1/2010[1]	75%	71%	-4%
Everest College	Gardena	Medical Assistant (Diploma)_8	7/1/2010[1]	78%	67%	-11%
Everest College	Gardena	Medical Insurance Billing and Coding (Diploma)_8	7/1/2010[1]	59%	58%	-1%
WyoTech	Long Beach	Automotive Technician (Diploma)_12	7/1/2010[1]	80%	26%	-54%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
WyoTech	Long Beach	Electrician (Diploma)_11	7/1/2010[1]	89%	76%	-13%
WyoTech	Long Beach	Electrician (Diploma)_9	7/1/2010[1]	73%	63%	-10%
WyoTech	Long Beach	Heating, Ventilation and Air Conditioning (Diploma)_7	7/1/2010[1]	74%	69%	-5%
WyoTech	Long Beach	Heating, Ventilation and Air Conditioning (Diploma)_9	7/1/2010[1]	76%	69%	-7%
WyoTech	Long Beach	Industrial Electrical Technology (Diploma)	7/1/2010[1]	76%	70%	-6%
WyoTech	Long Beach	Medical Assistant (Diploma)	7/1/2010[1]	86%	78%	-8%
WyoTech	Long Beach	Plumbing Technology (Diploma)_9	7/1/2010[1]	80%	64%	-16%
Everest College	Los Angeles Wilshire	Dental Assistant (Diploma)	7/1/2010[1]	83%	69%	-14%
Everest College	Los Angeles Wilshire	Massage Therapy (Diploma)	7/1/2010[1]	83%	71%	-12%
Everest College	Los Angeles Wilshire	Medical Administrative Assistant (Diploma)	7/1/2010[1]	74%	60%	-14%
Everest College	Los Angeles Wilshire	Medical Assistant (Diploma)	7/1/2010[1]	79%	49%	-30%
Everest College	Los Angeles Wilshire	Medical Insurance Billing and Coding (Diploma)	7/1/2010[1]	80%	67%	-13%
Everest College	Los Angeles Wilshire	Pharmacy Technician	7/1/2010[1]	100%	60%	-40%

Brand Name	Campus Name	Program	Date CCI Published Placement Rate	Placement Rate CCI Provided to Students	Recalculated Placement Rate	Difference between what CCI Told Students and Recalculated Rate
Everest College	Ontario	Dental Assistant (Diploma)	7/1/2010[1]	88%	73%	-16%
Everest College	Ontario	Massage Therapy (Diploma)	7/1/2010[1]	93%	90%	-3%
Everest College	Ontario	Medical Assistant (Diploma)	7/1/2010[1]	78%	52%	-26%
Everest College	Ontario	Medical Insurance Billing and Coding (Diploma)	7/1/2010[1]	72%	61%	-11%
Everest College	Ontario	Pharmacy Technician (Diploma)	7/1/2010[1]	70%	61%	-9%
Everest College	Ontario Metro	Accounting (Associate)	7/1/2010[1]	100%	69%	-31%
Everest College	Ontario Metro	Business Administration - AAS	7/1/2010[1]	100%	84%	-16%
Everest College	Ontario Metro	Criminal Justice (Bachelor)	7/1/2010[1]	52%	43%	-10%
Everest College	Ontario Metro	Paralegal (Associate)	7/1/2010[1]	85%	77%	-8%

[1] "2010 Annual Placement Disclosures"

[2] PIR disclosures with effective date of July 1, 2011

[3] PIR disclosures with effective date of July 1, 2012

[4] PIR disclosures with effective date of July 1, 2013.

[5] Web-based Disclosures:

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Borrower Defense Partial Relief Methodology
Corinthian Colleges, Inc. (CCI) Programs
December 2019

To calculate the amount of your borrower defense discharge relief, the U.S. Department of Education (ED) compared the earnings of those who completed the same or a similar program at your school ("median program earnings") to the earnings of those who completed the same or a similar program at other schools ("median comparison earnings"). Specifically, ED used a statistical tool called "standard deviation" to identify the range of program earnings that would qualify for loan relief, and then divided that range into quartiles to determine the amount of relief you would be provided. If your program earnings exceeded the comparison earnings, then even if you have filed an approved claim, you will not receive a discharge, unless your approved application is associated with CCI. If your approved application is associated with CCI, you will receive at least a 10% discharge. The larger the negative gap between your program earnings and comparison earnings, the greater the amount of loan discharge you received.

Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Accounting and Business/Management.	Associate	\$26,347.00	\$23,464.50	\$12,947.56	10%
Accounting and Business/Management.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Accounting and Business/Management.	Diploma	\$11,371.50	\$19,966.00	\$17,566.96	50%
Accounting and Business/Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Accounting Technology/Technician and Bookkeeping.	Associate	\$26,347.00	\$23,464.50	\$12,947.56	10%
Accounting Technology/Technician and Bookkeeping.	Diploma	\$11,371.50	\$19,966.00	\$17,566.96	50%
Accounting.	Associate	\$26,347.00	\$23,464.50	\$12,947.56	10%
Accounting.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Accounting.	Diploma	\$11,371.50	\$19,966.00	\$17,566.96	50%
Accounting.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Administrative Assistant and Secretarial Science, General.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Administrative Assistant and Secretarial Science, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Administrative Assistant and Secretarial Science, General.	Diploma	\$22,764.00	\$15,403.50	\$12,402.39	10%
Administrative Assistant and Secretarial Science, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Applied Psychology.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Athletic Training/Trainer.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Autobody/Collision and Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Autobody/Collision and Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Autobody/Collision and Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$20,317.09	10%
Autobody/Collision and Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Automobile/Automotive Mechanics Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Automobile/Automotive Mechanics Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Automobile/Automotive Mechanics Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$20,317.09	10%
Automobile/Automotive Mechanics Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Automotive Engineering Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$31,855.89	25%
Biological and Physical Sciences.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Biomedical Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$31,855.89	25%
Business Administration and Management, General.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Administration and Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Administration and Management, General.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Business Administration and Management, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Business Administration, Management and Operations, Other.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Administration, Management and Operations, Other.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Administration, Management and Operations, Other.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Business Administration, Management and Operations, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Business Operations Support and Secretarial Services, Other.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Operations Support and Secretarial Services, Other.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business Operations Support and Secretarial Services, Other.	Diploma	\$22,764.00	\$15,403.50	\$12,402.39	10%
Business Operations Support and Secretarial Services, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Business, Management, Marketing, and Related Support Services, Other.	Associate	\$19,106.00	\$19,768.50	\$11,779.09	25%
Business, Management, Marketing, and Related Support Services, Other.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business, Management, Marketing, and Related Support Services, Other.	Diploma	\$19,106.00	\$19,768.50	\$11,779.09	25%
Business, Management, Marketing, and Related Support Services, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Business/Commerce, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business/Office Automation/Technology/Data Entry.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business/Office Automation/Technology/Data Entry.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Business/Office Automation/Technology/Data Entry.	Diploma	\$22,764.00	\$15,403.50	\$12,402.39	10%
Business/Office Automation/Technology/Data Entry.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Cardiopulmonary Technology/Technologist.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%
Carpentry/Carpenter.	Associate	\$18,672.00	\$26,173.00	\$29,094.28	25%
Carpentry/Carpenter.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Carpentry/Carpenter.	Diploma	\$11,519.00	\$23,757.00	\$18,716.37	50%
Carpentry/Carpenter.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Cinematography and Film/Video Production.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Clinical Laboratory Science/Medical Technology/Technologist.	Diploma	\$16,474.50	\$22,243.00	\$24,969.14	25%
Computer and Information Sciences, General.	Associate	\$15,965.00	\$23,496.00	\$26,686.50	25%
Computer and Information Sciences, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Computer and Information Sciences, General.	Diploma	\$15,965.00	\$23,216.00	\$23,323.03	25%
Computer and Information Sciences, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Computer Programming, Specific Applications.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Computer Support Specialist.	Associate	\$15,965.00	\$23,496.00	\$26,686.50	25%
Computer Support Specialist.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Computer Support Specialist.	Diploma	\$15,965.00	\$23,496.00	\$26,686.50	25%
Computer Support Specialist.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Computer Systems Analysis/Analyst.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Construction Management.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Construction Management.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Construction Management.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Construction Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Court Reporting/Court Reporter.	Diploma	\$17,778.00	\$28,212.00	\$20,584.32	50%
Criminal Justice/Law Enforcement Administration.	Associate	\$28,654.00	\$21,707.00	\$9,251.29	10%
Criminal Justice/Law Enforcement Administration.	Bachelor	\$28,654.00	\$21,868.50	\$12,609.51	10%
Criminal Justice/Law Enforcement Administration.	Diploma	\$28,417.00	\$32,463.00	\$24,385.66	25%
Criminal Justice/Law Enforcement Administration.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Criminal Justice/Police Science.	Associate	\$28,654.00	\$21,707.00	\$9,251.29	10%
Criminal Justice/Police Science.	Bachelor	\$28,654.00	\$21,868.50	\$12,609.51	10%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Criminal Justice/Police Science.	Diploma	\$28,417.00	\$32,463.00	\$24,385.66	25%
Criminal Justice/Police Science.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Dental Assisting/Assistant.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Dental Assisting/Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Dental Assisting/Assistant.	Diploma	\$16,459.00	\$21,145.00	\$14,325.94	25%
Dental Assisting/Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Diagnostic Medical Sonography/Sonographer and Ultrasound Technician.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%
Diesel Mechanics Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Diesel Mechanics Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Diesel Mechanics Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$20,317.09	10%
Diesel Mechanics Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Drywall Installation/Drywall.	Diploma	\$18,672.00	\$26,173.00	\$29,094.28	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Associate	\$21,323.00	\$30,698.00	\$31,855.89	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Electrical, Electronic and Communications Engineering Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$31,855.89	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Electrical/Electronics Equipment Installation and Repair, General.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Electrical/Electronics Equipment Installation and Repair, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Electrical/Electronics Equipment Installation and Repair, General.	Diploma	\$26,642.00	\$26,265.00	\$21,664.57	10%
Electrical/Electronics Equipment Installation and Repair, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Electrician.	Associate	\$18,672.00	\$26,173.00	\$29,094.28	25%
Electrician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Electrician.	Diploma	\$23,697.00	\$29,079.00	\$29,302.38	25%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Electrician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Engineering, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
English Language and Literature/Letters, Other.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Entrepreneurship/Entrepreneurial Studies.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Entrepreneurship/Entrepreneurial Studies.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Entrepreneurship/Entrepreneurial Studies.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Entrepreneurship/Entrepreneurial Studies.	Master	No Data Available	No Data Available	No Data Available	No Data Available
General Office Occupations and Clerical Services.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
General Office Occupations and Clerical Services.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
General Office Occupations and Clerical Services.	Diploma	\$22,764.00	\$15,403.50	\$12,402.39	10%
General Office Occupations and Clerical Services.	Master	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available
Health and Wellness, General.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health and Wellness, General.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health and Wellness, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Health Information/Medical Records Administration/Administrator.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health Information/Medical Records Administration/Administrator.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Health Information/Medical Records Technology/Technician.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health Information/Medical Records Technology/Technician.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Health Information/Medical Records Technology/Technician.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Health Information/Medical Records Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Health/Health Care Administration/Management.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health/Health Care Administration/Management.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Health/Health Care Administration/Management.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Health/Health Care Administration/Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Diploma	\$26,642.00	\$26,265.00	\$21,664.57	10%
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Associate	\$21,323.00	\$30,698.00	\$31,855.89	25%
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Diploma	\$22,574.50	\$27,836.50	\$27,274.97	25%
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Homeland Security.	Associate	\$28,654.00	\$21,868.50	\$12,609.51	10%
Homeland Security.	Bachelor	\$28,654.00	\$21,868.50	\$12,609.51	10%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Homeland Security.	Diploma	\$28,417.00	\$33,473.50	\$24,806.75	25%
Homeland Security.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Hospitality Administration/Management, General.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Hospitality Administration/Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Hospitality Administration/Management, General.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Hospitality Administration/Management, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Industrial Production Technologies/Technicians, Other.	Associate	\$21,323.00	\$30,698.00	\$31,855.89	25%
International Business/Trade/Commerce.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Legal Assistant/Paralegal.	Associate	\$13,331.00	\$22,043.50	\$12,518.68	75%
Legal Assistant/Paralegal.	Bachelor	\$13,331.00	\$22,043.50	\$12,518.68	75%
Legal Assistant/Paralegal.	Diploma	\$17,778.00	\$28,212.00	\$20,584.32	50%
Legal Assistant/Paralegal.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Liberal Arts and Sciences/Liberal Studies.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Liberal Arts and Sciences/Liberal Studies.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available
Licensed Practical/Vocational Nurse Training.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Licensed Practical/Vocational Nurse Training.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Licensed Practical/Vocational Nurse Training.	Diploma	\$14,174.00	\$34,251.50	\$18,928.51	100%
Licensed Practical/Vocational Nurse Training.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$20,317.09	10%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Marketing/Marketing Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Massage Therapy/Therapeutic Massage.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Massage Therapy/Therapeutic Massage.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Massage Therapy/Therapeutic Massage.	Diploma	\$13,260.00	\$14,678.50	\$8,971.20	25%
Massage Therapy/Therapeutic Massage.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Mechanical Engineering.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Medical Administrative/Executive Assistant and Medical Secretary.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Administrative/Executive Assistant and Medical Secretary.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Administrative/Executive Assistant and Medical Secretary.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Medical Administrative/Executive Assistant and Medical Secretary.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Medical Insurance Coding Specialist/Coder.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Medical Insurance Specialist/Medical Biller.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Insurance Specialist/Medical Biller.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Insurance Specialist/Medical Biller.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Medical Insurance Specialist/Medical Biller.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Medical Office Management/Administration.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Office Management/Administration.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical Office Management/Administration.	Diploma	\$15,823.50	\$19,552.00	\$13,198.30	25%
Medical Office Management/Administration.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Medical Radiologic Technology/Science-Radiation Therapist.	Associate	\$29,558.00	\$33,215.00	\$29,017.73	25%
Medical/Clinical Assistant.	Associate	\$20,011.00	\$21,351.00	\$18,322.00	25%
Medical/Clinical Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Medical/Clinical Assistant.	Diploma	\$17,579.00	\$19,283.00	\$10,072.06	25%
Medical/Clinical Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Medical/Health Management and Clinical Assistant/Specialist.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Motorcycle Maintenance and Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$21,664.57	10%
Motorcycle Maintenance and Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Motorcycle Maintenance and Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$20,317.09	10%
Motorcycle Maintenance and Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Music Technology.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Nail Technician/Specialist and Manicurist.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Associate	\$15,965.00	\$23,496.00	\$26,686.50	25%
Network and System Administration/Administrator.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Diploma	\$15,965.00	\$23,496.00	\$26,686.50	25%
Network and System Administration/Administrator.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Nurse/Nursing Assistant/Aide and Patient Care Assistant.	Diploma	\$16,474.50	\$22,243.00	\$24,969.14	25%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Diploma	\$14,174.00	\$34,251.50	\$18,928.51	100%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Pharmacy Technician/Assistant.	Associate	\$20,011.00	\$21,351.00	\$18,322.00	25%
Pharmacy Technician/Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Pharmacy Technician/Assistant.	Diploma	\$17,579.00	\$19,283.00	\$10,072.06	25%
Pharmacy Technician/Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Plumbing Technology/Plumber.	Associate	\$18,672.00	\$26,173.00	\$29,094.28	25%
Plumbing Technology/Plumber.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Plumbing Technology/Plumber.	Diploma	\$14,176.00	\$19,912.00	\$34,627.27	25%
Plumbing Technology/Plumber.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Practical Nursing, Vocational Nursing and Nursing Assistants, Other.	Diploma	\$14,174.00	\$34,251.50	\$18,928.51	100%
Pre-Engineering.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Psychology, General.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Radiologic Technology/Science-Radiographer.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%
Registered Nursing/Registered Nurse.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Registered Nursing/Registered Nurse.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Registered Nursing/Registered Nurse.	Diploma	\$16,474.50	\$22,243.00	\$24,969.14	25%
Registered Nursing/Registered Nurse.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Renal/Dialysis Technologist/Technician.	Associate	\$24,784.50	\$22,447.50	\$27,915.77	10%
Renal/Dialysis Technologist/Technician.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Renal/Dialysis Technologist/Technician.	Diploma	\$16,474.50	\$22,243.00	\$24,969.14	25%
Renal/Dialysis Technologist/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Respiratory Care Therapy/Therapist.	Associate	\$29,558.00	\$33,215.00	\$29,017.73	25%
Respiratory Care Therapy/Therapist.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Respiratory Care Therapy/Therapist.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%
Respiratory Care Therapy/Therapist.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Restaurant, Culinary, and Catering Management/Manager.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available
Sales, Distribution, and Marketing Operations, General.	Associate	\$22,726.50	\$22,014.00	\$14,262.27	10%
Sales, Distribution, and Marketing Operations, General.	Bachelor	\$22,726.50	\$22,014.00	\$14,262.27	10%
Sales, Distribution, and Marketing Operations, General.	Diploma	\$11,669.00	\$18,104.00	\$20,654.64	25%
Sales, Distribution, and Marketing Operations, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Social Sciences, General.	Associate	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Sociology.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Sociology.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Speech Communication and Rhetoric.	Associate	No Data Available	No Data Available	No Data Available	No Data Available
Surgical Technology/Technologist.	Associate	\$29,558.00	\$33,215.00	\$29,017.73	25%
Surgical Technology/Technologist.	Bachelor	\$24,784.50	\$22,447.50	\$27,915.77	10%
Surgical Technology/Technologist.	Diploma	\$24,166.00	\$33,997.00	\$33,612.24	25%
Surgical Technology/Technologist.	Master	No Data Available	No Data Available	No Data Available	No Data Available
Sustainability Studies.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available
Youth Services/Administration.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available

Borrower Defense Partial Relief Methodology
Corinthian Colleges, Inc. (CCI) Programs
December 2019

To calculate the amount of your borrower defense discharge relief, the U.S. Department of Education (ED) compared the earnings of those who completed the same or a similar program at your school ("median program earnings") to the earnings of those who completed the same or a similar program at other schools ("median comparison earnings"). Specifically, ED used a statistical tool called "standard deviation" to identify the range of program earnings that would qualify for loan relief, and then divided that range into quartiles to determine the amount of relief you would be provided. If your program earnings exceeded the comparison earnings, then even if you have filed an approved claim, you will not receive a discharge, unless your approved application is associated with CCI. If your approved application is associated with CCI you will receive at least a 10% discharge. The larger the negative gap between your program earnings and comparison earnings, the greater the amount of loan discharge you received.

If the relief score is a negative number, the relief is 10%. If it is greater than zero but less than 0.67, then the relief is 25%. If it is greater than or equal to 0.67 but less than 1.33, then the relief is 50%. If it is greater than or equal to 1.33 but less than 2, then the relief is 75%. If it is greater than or equal to 2, then the relief is 100%. The relief score is calculated by subtracting median program earnings from median comparison earnings and then dividing the result by 1 standard deviation.

Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Accounting and Business/Management.	Associate	\$26,347.00	\$23,464.50	\$6,473.78	\$12,947.56	-0.45	10%
Accounting and Business/Management.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Accounting and Business/Management.	Diploma	\$11,371.50	\$19,966.00	\$8,783.48	\$17,566.96	0.98	50%
Accounting and Business/Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Accounting Technology/Technician and Bookkeeping.	Associate	\$26,347.00	\$23,464.50	\$6,473.78	\$12,947.56	-0.45	10%
Accounting Technology/Technician and Bookkeeping.	Diploma	\$11,371.50	\$19,966.00	\$8,783.48	\$17,566.96	0.98	50%
Accounting.	Associate	\$26,347.00	\$23,464.50	\$6,473.78	\$12,947.56	-0.45	10%
Accounting.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Accounting.	Diploma	\$11,371.50	\$19,966.00	\$8,783.48	\$17,566.96	0.98	50%
Accounting.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Administrative Assistant and Secretarial Science, General.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Administrative Assistant and Secretarial Science, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Administrative Assistant and Secretarial Science, General.	Diploma	\$22,764.00	\$15,403.50	\$6,201.20	\$12,402.39	-1.19	10%
Administrative Assistant and Secretarial Science, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Applied Psychology.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Athletic Training/Trainer.	Diploma	\$24,166.00	\$13,997.00	\$16,806.12	\$33,612.24	0.58	25%
Autobody/Collision and Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Autobody/Collision and Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Autobody/Collision and Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$10,158.54	\$20,317.09	-0.03	10%
Autobody/Collision and Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Automobile/Automotive Mechanics Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Automobile/Automotive Mechanics Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Automobile/Automotive Mechanics Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$10,158.54	\$20,317.09	-0.03	10%
Automobile/Automotive Mechanics Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Automotive Engineering Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
Biological and Physical Sciences.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Biomedical Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
Business Administration and Management, General.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Administration and Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Administration and Management, General.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Business Administration and Management, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Business Administration, Management and Operations, Other.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Administration, Management and Operations, Other.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Administration, Management and Operations, Other.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Business Administration, Management and Operations, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Business Operations Support and Secretarial Services, Other.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Operations Support and Secretarial Services, Other.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business Operations Support and Secretarial Services, Other.	Diploma	\$22,764.00	\$15,403.50	\$6,201.20	\$12,402.39	-1.19	10%
Business Operations Support and Secretarial Services, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Business, Management, Marketing, and Related Support Services, Other.	Associate	\$19,106.00	\$19,768.50	\$5,889.54	\$11,779.09	0.11	25%
Business, Management, Marketing, and Related Support Services, Other.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business, Management, Marketing, and Related Support Services, Other.	Diploma	\$19,106.00	\$19,768.50	\$5,889.54	\$11,779.09	0.11	25%
Business, Management, Marketing, and Related Support Services, Other.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Business/Commerce, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business/Office Automation/Technology/Data Entry.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business/Office Automation/Technology/Data Entry.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Business/Office Automation/Technology/Data Entry.	Diploma	\$22,764.00	\$15,403.50	\$6,201.20	\$12,402.39	-1.19	10%
Business/Office Automation/Technology/Data Entry.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Cardiopulmonary Technology/Technologist.	Diploma	\$24,166.00	\$33,997.00	\$16,806.12	\$33,612.24	0.58	25%
Carpentry/Carpenter.	Associate	\$18,672.00	\$26,173.00	\$14,547.14	\$29,094.28	0.52	25%
Carpentry/Carpenter.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Carpentry/Carpenter.	Diploma	\$11,519.00	\$23,757.00	\$9,358.19	\$18,716.37	1.31	50%
Carpentry/Carpenter.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Cinematography and Film/Video Production.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Cinematography and Film/Video Production.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Clinical Laboratory Science/Medical Technology/Technologist.	Diploma	\$16,474.50	\$22,243.00	\$12,484.57	\$24,969.14	0.46	25%
Computer and Information Sciences, General.	Associate	\$15,965.00	\$23,496.00	\$13,343.25	\$26,686.50	0.56	25%
Computer and Information Sciences, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Computer and Information Sciences, General.	Diploma	\$15,965.00	\$23,216.00	\$11,661.51	\$23,323.03	0.62	25%
Computer and Information Sciences, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Computer Programming, Specific Applications.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Computer Support Specialist.	Associate	\$15,965.00	\$23,496.00	\$13,343.25	\$26,686.50	0.56	25%
Computer Support Specialist.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Computer Support Specialist.	Diploma	\$15,965.00	\$23,496.00	\$13,343.25	\$26,686.50	0.56	25%
Computer Support Specialist.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Computer Systems Analysis/Analyst.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Construction Management.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Construction Management.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Construction Management.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Construction Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Court Reporting/Court Reporter.	Diploma	\$17,778.00	\$28,212.00	\$10,292.16	\$20,584.32	1.01	50%
Criminal Justice/Law Enforcement Administration.	Associate	\$28,654.00	\$21,707.00	\$4,625.64	\$9,251.29	-1.50	10%
Criminal Justice/Law Enforcement Administration.	Bachelor	\$28,654.00	\$21,868.50	\$6,304.76	\$12,609.51	-1.08	10%
Criminal Justice/Law Enforcement Administration.	Diploma	\$28,417.00	\$32,463.00	\$12,192.83	\$24,385.66	0.33	25%
Criminal Justice/Law Enforcement Administration.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Criminal Justice/Police Science.	Associate	\$28,654.00	\$21,707.00	\$4,625.64	\$9,251.29	-1.50	10%
Criminal Justice/Police Science.	Bachelor	\$28,654.00	\$21,868.50	\$6,304.76	\$12,609.51	-1.08	10%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Criminal Justice/Police Science.	Diploma	\$28,417.00	\$32,463.00	\$12,192.83	\$24,385.66	0.33	25%
Criminal Justice/Police Science.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Dental Assisting/Assistant.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Dental Assisting/Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Dental Assisting/Assistant.	Diploma	\$16,459.00	\$21,145.00	\$7,162.97	\$14,325.94	0.65	25%
Dental Assisting/Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Diagnostic Medical Sonography/Sonographer and Ultrasound Technician.	Diploma	\$24,166.00	\$33,997.00	\$16,806.12	\$33,612.24	0.58	25%
Diesel Mechanics Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Diesel Mechanics Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Diesel Mechanics Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$10,158.54	\$20,317.09	-0.03	10%
Diesel Mechanics Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Drywall Installation/Drywall.	Diploma	\$18,672.00	\$26,173.00	\$14,547.14	\$29,094.28	0.52	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Associate	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Electrical, Electronic and Communications Engineering Technology/Technician.	Diploma	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Electrical/Electronics Equipment Installation and Repair, General.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Electrical/Electronics Equipment Installation and Repair, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Electrical/Electronics Equipment Installation and Repair, General.	Diploma	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Electrical/Electronics Equipment Installation and Repair, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Electrician.	Associate	\$18,672.00	\$26,173.00	\$14,547.14	\$29,094.28	0.52	25%
Electrician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Electrician.	Diploma	\$23,697.00	\$29,079.00	\$14,651.19	\$29,302.38	0.37	25%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Electrician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Engineering, General.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
English Language and Literature/Letters, Other.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Entrepreneurship/Entrepreneurial Studies.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Entrepreneurship/Entrepreneurial Studies.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Entrepreneurship/Entrepreneurial Studies.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Entrepreneurship/Entrepreneurial Studies.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
General Office Occupations and Clerical Services.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
General Office Occupations and Clerical Services.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
General Office Occupations and Clerical Services.	Diploma	\$22,764.00	\$15,403.50	\$6,201.20	\$12,402.39	-1.19	10%
General Office Occupations and Clerical Services.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
General Studies.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Health and Wellness, General.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health and Wellness, General.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health and Wellness, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Health Information/Medical Records Administration/Administrator.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health Information/Medical Records Administration/Administrator.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Health Information/Medical Records Technology/Technician.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health Information/Medical Records Technology/Technician.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Health Information/Medical Records Technology/Technician.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Health Information/Medical Records Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Health/Health Care Administration/Management.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health/Health Care Administration/Management.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Health/Health Care Administration/Management.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Health/Health Care Administration/Management.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Diploma	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Heating, Air Conditioning, Ventilation and Refrigeration Maintenance Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Associate	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Diploma	\$22,574.50	\$27,836.50	\$13,637.48	\$27,274.97	0.39	25%
Heating, Ventilation, Air Conditioning and Refrigeration Engineering Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Homeland Security.	Associate	\$28,654.00	\$21,868.50	\$6,304.76	\$12,609.51	-1.08	10%
Homeland Security.	Bachelor	\$28,654.00	\$21,868.50	\$6,304.76	\$12,609.51	-1.08	10%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Homeland Security.	Diploma	\$28,417.00	\$33,473.50	\$12,403.38	\$24,806.75	0.41	25%
Homeland Security.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Hospitality Administration/Management, General.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Hospitality Administration/Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Hospitality Administration/Management, General.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Hospitality Administration/Management, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Industrial Production Technologies/Technicians, Other.	Associate	\$21,323.00	\$30,698.00	\$15,927.94	\$31,855.89	0.59	25%
International Business/Trade/Commerce.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Legal Assistant/Paralegal.	Associate	\$13,331.00	\$22,043.50	\$6,259.34	\$12,518.68	1.39	75%
Legal Assistant/Paralegal.	Bachelor	\$13,331.00	\$22,043.50	\$6,259.34	\$12,518.68	1.39	75%
Legal Assistant/Paralegal.	Diploma	\$17,178.00	\$28,212.00	\$10,292.16	\$20,584.32	1.01	50%
Legal Assistant/Paralegal.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Liberal Arts and Sciences/Liberal Studies.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Liberal Arts and Sciences/Liberal Studies.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Licensed Practical/Vocational Nurse Training.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Licensed Practical/Vocational Nurse Training.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Licensed Practical/Vocational Nurse Training.	Diploma	\$14,174.00	\$34,251.50	\$9,464.26	\$18,928.51	2.12	100%
Licensed Practical/Vocational Nurse Training.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$10,158.54	\$20,317.09	-0.03	10%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Marine Maintenance/Fitter and Ship Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Marketing/Marketing Management, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Massage Therapy/Therapeutic Massage.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Massage Therapy/Therapeutic Massage.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Massage Therapy/Therapeutic Massage.	Diploma	\$13,260.00	\$14,678.50	\$4,485.60	\$8,971.20	0.32	25%
Massage Therapy/Therapeutic Massage.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Mechanical Engineering.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Medical Administrative/Executive Assistant and Medical Secretary.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Administrative/Executive Assistant and Medical Secretary.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Administrative/Executive Assistant and Medical Secretary.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Medical Administrative/Executive Assistant and Medical Secretary.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Medical Insurance Coding Specialist/Coder.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Medical Insurance Specialist/Medical Biller.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Insurance Specialist/Medical Biller.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Insurance Specialist/Medical Biller.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Medical Insurance Specialist/Medical Biller.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Medical Office Management/Administration.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Office Management/Administration.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical Office Management/Administration.	Diploma	\$15,823.50	\$19,552.00	\$6,599.15	\$13,198.30	0.56	25%
Medical Office Management/Administration.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Medical Radiologic Technology/Science-Radiation Therapist.	Associate	\$29,558.00	\$33,215.00	\$14,508.86	\$29,017.73	0.25	25%
Medical/Clinical Assistant.	Associate	\$20,011.00	\$21,351.00	\$9,161.00	\$18,322.00	0.15	25%
Medical/Clinical Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Medical/Clinical Assistant.	Diploma	\$17,579.00	\$19,283.00	\$5,036.03	\$10,072.06	0.34	25%
Medical/Clinical Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Medical/Health Management and Clinical Assistant/Specialist.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Motorcycle Maintenance and Repair Technology/Technician.	Associate	\$26,642.00	\$26,265.00	\$10,832.29	\$21,664.57	-0.03	10%
Motorcycle Maintenance and Repair Technology/Technician.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Motorcycle Maintenance and Repair Technology/Technician.	Diploma	\$26,642.00	\$26,294.00	\$10,158.54	\$20,317.09	-0.03	10%
Motorcycle Maintenance and Repair Technology/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Music Technology.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Nail Technician/Specialist and Manicurist.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Associate	\$15,965.00	\$23,496.00	\$13,343.25	\$26,686.50	0.56	25%
Network and System Administration/Administrator.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Diploma	\$15,965.00	\$23,496.00	\$13,343.25	\$26,686.50	0.56	25%
Network and System Administration/Administrator.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Nurse/Nursing Assistant/Aide and Patient Care Assistant/Aide.	Diploma	\$16,474.50	\$22,243.00	\$12,484.57	\$24,969.14	0.46	25%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Diploma	\$14,174.00	\$34,251.50	\$9,464.26	\$18,928.51	2.12	100%
Nursing Assistant/Aide and Patient Care Assistant/Aide.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Pharmacy Technician/Assistant.	Associate	\$20,011.00	\$21,351.00	\$9,161.00	\$18,322.00	0.15	25%
Pharmacy Technician/Assistant.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Pharmacy Technician/Assistant.	Diploma	\$17,579.00	\$19,283.00	\$5,036.03	\$10,072.06	0.34	25%
Pharmacy Technician/Assistant.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Plumbing Technology/Plumber.	Associate	\$18,672.00	\$26,173.00	\$14,547.14	\$29,094.28	0.52	25%
Plumbing Technology/Plumber.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Plumbing Technology/Plumber.	Diploma	\$14,176.00	\$19,912.00	\$17,313.64	\$34,627.27	0.33	25%
Plumbing Technology/Plumber.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Practical Nursing, Vocational Nursing and Nursing Assistants, Other.	Diploma	\$14,174.00	\$34,251.50	\$9,464.26	\$18,928.51	2.12	100%
Pre-Engineering.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Psychology, General.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Radiologic Technology/Science-Radiographer.	Diploma	\$24,166.00	\$33,997.00	\$16,806.12	\$33,612.24	0.58	25%
Registered Nursing/Registered Nurse.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Registered Nursing/Registered Nurse.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Registered Nursing/Registered Nurse.	Diploma	\$16,474.50	\$22,243.00	\$12,484.57	\$24,969.14	0.46	25%
Registered Nursing/Registered Nurse.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Renal/Dialysis Technologist/Technician.	Associate	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Renal/Dialysis Technologist/Technician.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Renal/Dialysis Technologist/Technician.	Diploma	\$16,474.50	\$22,243.00	\$12,484.57	\$24,969.14	0.46	25%
Renal/Dialysis Technologist/Technician.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Respiratory Care Therapy/Therapist.	Associate	\$29,558.00	\$33,215.00	\$14,508.86	\$29,017.73	0.25	25%
Respiratory Care Therapy/Therapist.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Respiratory Care Therapy/Therapist.	Diploma	\$24,166.00	\$33,997.00	\$16,806.12	\$33,612.24	0.58	25%
Respiratory Care Therapy/Therapist.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Restaurant, Culinary, and Catering Management/Manager.	Diploma	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Sales, Distribution, and Marketing Operations, General.	Associate	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Sales, Distribution, and Marketing Operations, General.	Bachelor	\$22,726.50	\$22,014.00	\$7,131.13	\$14,262.27	-0.10	10%
Sales, Distribution, and Marketing Operations, General.	Diploma	\$11,669.00	\$18,104.00	\$10,327.32	\$20,654.64	0.62	25%
Sales, Distribution, and Marketing Operations, General.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Social Sciences, General.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Program Name	Credential	Median Program Earnings (CCI)	Median Comparison Earnings (Non-CCI Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief
Sociology.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Sociology.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Speech Communication and Rhetoric.	Associate	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Surgical Technology/Technologist.	Associate	\$29,558.00	\$33,215.00	\$14,508.86	\$29,017.73	0.25	25%
Surgical Technology/Technologist.	Bachelor	\$24,784.50	\$22,447.50	\$13,957.89	\$27,915.77	-0.17	10%
Surgical Technology/Technologist.	Diploma	\$24,166.00	\$33,997.00	\$16,806.12	\$33,612.24	0.58	25%
Surgical Technology/Technologist.	Master	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Sustainability Studies.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Youth Services/Administration.	Bachelor	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available

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Borrower Defense Partial Relief Methodology
ITT Educational Services, Inc. Programs
December 2019

To calculate the amount of your borrower defense discharge relief, the U.S. Department of Education (ED) compared the earnings of those who completed the same or a similar program at your school ("median program earnings") to the earnings of those who completed the same or a similar program at other schools ("median comparison earnings"). Specifically, ED used a statistical tool called "standard deviation" to identify the range of program earnings that would qualify for loan relief, and then divided that range into quartiles to determine the amount of relief you would be provided. If your program earnings exceeded the comparison earnings, then even if you have filed an approved claim, you will not receive a discharge. The larger the negative gap between your program earnings and comparison earnings, the greater the amount of loan discharge you received.

Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Accounting Technology/Technician and Bookkeeping.	Associate	\$26,257.00	\$23,464.50	\$12,948.49	0%
Accounting Technology/Technician and Bookkeeping.	Bachelor	\$34,013.00	\$39,134.00	\$16,477.37	25%
Animation, Interactive Technology, Video Graphics and Special Effects.	Bachelor	\$23,114.00	\$26,035.50	\$19,569.43	25%
Business Administration and Management, General.	Associate	\$25,072.00	\$20,861.00	\$15,855.27	0%
Business Administration and Management, General.	Bachelor	\$35,693.00	\$36,945.50	\$24,177.02	25%
Business Administration and Management, General.	Master	\$43,093.00	\$50,607.00	\$18,927.79	50%
CAD/CADD Drafting and/or Design Technology/Technician.	Associate	\$35,947.00	\$31,649.00	\$14,547.47	0%
Computer and Information Systems Security/Information Assurance.	Bachelor	\$46,083.00	\$49,694.50	\$34,107.25	25%
Computer Programming/Programmer, General.	Associate	\$31,679.00	\$24,176.50	\$15,048.34	0%
Computer Programming/Programmer, General.	Bachelor	\$50,558.00	\$52,988.00	\$32,028.10	25%
Computer Software and Media Applications, Other.	Associate	\$30,127.50	\$23,012.50	\$23,751.61	0%
Computer Software and Media Applications, Other.	Bachelor	\$54,098.00	\$44,052.00	\$22,727.71	0%
Computer Systems Networking and Telecommunications.	Associate	\$32,687.50	\$26,037.00	\$15,240.03	0%

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Program Name	Credential	Median Program Earnings	Median Comparison Earnings	2 Standard Deviations	% Relief Standard Deviation
Construction Management.	Bachelor	\$43,589.00	No Data Available	No Data Available	No Data Available
Construction Trades, General.	Associate	\$51,180.00	No Data Available	No Data Available	No Data Available
Criminal Justice/Law Enforcement Administration.	Associate	\$21,948.00	\$21,815.00	\$9,387.91	0%
Criminal Justice/Law Enforcement Administration.	Bachelor	\$26,053.50	\$29,678.50	\$18,572.86	25%
Design and Visual Communications, General.	Associate	\$19,838.50	\$21,371.00	\$12,005.15	25%
E-Commerce/Electronic Commerce.	Bachelor	\$35,693.00	\$36,945.50	\$24,177.02	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Associate	\$36,773.50	\$30,465.50	\$16,306.59	0%
Electrical, Electronic and Communications Engineering Technology/Technician.	Bachelor	\$53,355.00	\$47,972.00	\$16,832.58	0%
Health Information/Medical Records Technology/Technician.	Associate	\$24,425.00	\$19,808.00	\$9,669.74	0%
Information Technology.	Associate	\$39,443.00	\$22,996.00	\$14,513.53	0%
Legal Assistant/Paralegal.	Associate	\$25,382.50	\$21,898.00	\$12,624.22	0%
Manufacturing Engineering Technology/Technician.	Bachelor	\$55,204.00	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Associate	\$33,904.00	\$28,396.00	\$15,905.39	0%
Network and System Administration/Administrator.	Bachelor	\$46,083.00	\$49,694.50	\$34,107.25	25%
Registered Nursing/Registered Nurse.	Associate	\$50,267.00	\$52,443.00	\$31,306.56	25%
Web Page, Digital/Multimedia and Information Resources Design.	Associate	\$30,127.50	\$23,012.50	\$23,751.61	0%

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Borrower Defense Partial Relief Methodology
ITT Educational Services, Inc. Programs
December 2019

To calculate the amount of your borrower defense discharge relief, the U.S. Department of Education (ED) compared the earnings of those who completed the same or a similar program at your school ("median program earnings") to the earnings of those who completed the same or a similar program at other schools ("median comparison earnings"). Specifically, ED used a statistical tool called "standard deviation" to identify the range of program earnings that would qualify for loan relief, and then divided that range into quartiles to determine the amount of relief you would be provided. If your program earnings exceeded the comparison earnings, then even if you have filed an approved claim, you will not receive a discharge, unless your approved application is associated with CCI. If your approved application is associated with CCI, you will receive at least a 10% discharge. The larger the negative gap between your program earnings and comparison earnings, the greater the amount of loan discharge you received.

If the relief score is a negative number, the relief is 0%, if it is greater than zero but less than 0.67, then the relief is 25%, if it is greater than or equal to 0.67 but less than 1.33, then the relief is 50%, if it is greater than or equal to 1.33 but less than 2, then the relief is 75%, if it is greater than or equal to 2, then the relief is 100%. The relief score is calculated by subtracting median program earnings from median comparison earnings and then dividing the result by 1 standard deviation.

Program Name	Credential	Median Program Earnings (ITT)	Median Comparison Earnings (Non-ITT Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief Standard Deviation
Accounting Technology/Technician and Bookkeeping.	Associate	\$26,257.00	\$23,464.50	\$6,474.24	\$12,948.49	-0.43	0%
Accounting Technology/Technician and Bookkeeping.	Bachelor	\$34,013.00	\$39,134.00	\$8,238.68	\$16,477.37	0.62	25%
Animation, Interactive Technology, Video Graphics and Special Effects.	Bachelor	\$23,114.00	\$26,035.50	\$9,784.72	\$19,569.43	0.30	25%
Business Administration and Management, General.	Associate	\$25,072.00	\$20,861.00	\$7,927.63	\$15,855.27	-0.53	0%
Business Administration and Management, General.	Bachelor	\$35,693.00	\$36,945.50	\$12,088.51	\$24,177.02	0.10	25%
Business Administration and Management, General.	Master	\$43,093.00	\$50,607.00	\$9,463.89	\$18,927.79	0.79	50%
CAD/CADD Drafting and/or Design Technology/Technician.	Associate	\$35,947.00	\$31,649.00	\$7,273.74	\$14,547.47	-0.59	0%
Computer and Information Systems Security/Information Assurance.	Bachelor	\$46,083.00	\$49,694.50	\$17,053.62	\$34,107.25	0.21	25%
Computer Programming/Programmer, General.	Associate	\$31,679.00	\$24,176.50	\$7,524.17	\$15,048.34	-1.00	0%
Computer Programming/Programmer, General.	Bachelor	\$50,558.00	\$52,988.00	\$16,014.05	\$32,028.10	0.15	25%
Computer Software and Media Applications, Other.	Associate	\$30,127.50	\$23,012.50	\$11,875.81	\$23,751.61	-0.60	0%
Computer Software and Media Applications, Other.	Bachelor	\$54,098.00	\$44,052.00	\$11,363.86	\$22,727.71	-0.88	0%

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Program Name	Credential	Median Program Earnings (ITT)	Median Comparison Earnings (Non-ITT Programs)	1 Standard Deviation	2 Standard Deviations	Relief Score	% Relief Standard Deviation
Computer Systems Networking and Telecommunications.	Associate	\$32,687.50	\$26,037.00	\$7,620.01	\$15,240.03	-0.87	0%
Construction Management.	Bachelor	\$43,589.00	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Construction Trades, General.	Associate	\$51,180.00	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Criminal Justice/Law Enforcement Administration.	Associate	\$21,948.00	\$21,815.00	\$4,693.95	\$9,387.91	-0.03	0%
Criminal Justice/Law Enforcement Administration.	Bachelor	\$26,053.50	\$29,678.50	\$9,286.43	\$18,572.86	0.39	25%
Design and Visual Communications, General.	Associate	\$19,838.50	\$21,371.00	\$6,002.58	\$12,005.15	0.26	25%
E-Commerce/Electronic Commerce.	Bachelor	\$35,693.00	\$36,945.50	\$12,088.51	\$24,177.02	0.10	25%
Electrical, Electronic and Communications Engineering Technology/Technician.	Associate	\$36,773.50	\$30,465.50	\$8,153.30	\$16,306.59	-0.77	0%
Electrical, Electronic and Communications Engineering Technology/Technician.	Bachelor	\$53,355.00	\$47,972.00	\$8,416.29	\$16,832.58	-0.64	0%
Health Information/Medical Records Technology/Technician.	Associate	\$24,425.00	\$19,808.00	\$4,834.87	\$9,669.74	-0.95	0%
Information Technology.	Associate	\$39,443.00	\$22,996.00	\$7,256.76	\$14,513.53	-2.27	0%
Legal Assistant/Paralegal.	Associate	\$25,382.50	\$21,898.00	\$6,312.11	\$12,624.22	-0.55	0%
Manufacturing Engineering Technology/Technician.	Bachelor	\$55,204.00	No Data Available	No Data Available	No Data Available	No Data Available	No Data Available
Network and System Administration/Administrator.	Associate	\$33,904.00	\$28,396.00	\$7,952.70	\$15,905.39	-0.69	0%
Network and System Administration/Administrator.	Bachelor	\$46,083.00	\$49,694.50	\$17,053.62	\$34,107.25	0.21	25%
Registered Nursing/Registered Nurse.	Associate	\$50,267.00	\$52,443.00	\$15,653.28	\$31,306.56	0.14	25%
Web Page, Digital/Multimedia and Information Resources Design.	Associate	\$30,127.50	\$23,012.50	\$11,875.81	\$23,751.61	-0.60	0%

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POLICY STATEMENT

RE: Tiered relief methodology to adjudicate certain borrower defense claims

DATE: December 10, 2019

This Policy Statement sets forth the Department's approach to determine the amount of relief to be provided to certain groups of borrowers who meet the legal standard for federal student loan discharges and other relief under the Department's borrower defense to repayment ("borrower defense" or "BD") authorities. This approach involves a standard methodology that establishes a rebuttable presumption regarding relief, enabling the Department to process claims expeditiously while ensuring the flexibility and opportunity to make individualized determinations.

This Memorandum follows from the options memorandum (the "Options Memo") regarding potential approaches presented by the Office of the Under Secretary ("OUS") and Federal Student Aid (FSA) to implement a new, tiered relief methodology to adjudicate current and future borrower defense claims. The Options Memo outlined different methodologies for the Secretary's consideration and was signed by the Secretary on November 12, 2019.

The tiered methodology adopted by this Policy Statement establishes a rebuttable presumption. That is, it provides the framework within which the Department will determine relief for meritorious cases. However, under the Department's regulations, borrowers have the right to seek reconsideration, submit new evidence regarding their borrower defense application, and rebut the relief presumption.

I. Governing law and regulations

Under § 455(h) of the Higher Education Act of 1965, as amended ("HEA"), 20 U.S.C. § 1087e(h), the Department is authorized to establish regulations under which borrowers may assert "acts or omissions of an institution of higher education . . . as a defense to repayment" of a Direct Loan. In 1994, the Department published regulations regarding borrower defense, 34 C.F.R. § 685.206(c). The Department recently amended those regulations both in 2016 and in 2019.

The 1994 regulation stated that if "the borrower's defense against repayment is successful," the borrower may be "relieved of the obligation to repay all or part of the loan and associated costs and fees." *Id.* at § 685.206(c)(2) (2016). After the 2016 amendments, the revised regulations similarly provide that a borrower may be relieved of his or her obligation to repay all or part of the loan and associated costs. *See* 34 C.F.R. § 685.222(i)(1) (2017).

II. Background

Prior to 2015, the Department had received only a small number of requests for federal student loan discharges under the Department's borrower defense to repayment authorities. However, in 2015, the number of borrower defense applications increased significantly following the collapse of Corinthian Colleges, Inc. ("CCI"). The Department also announced that borrowers would be able to apply for federal student loan discharges by asserting a borrower defense to the repayment of their related federal student loans. The Department created an application form specifically for CCI borrowers who had enrolled in certain programs during certain time periods to expedite the application process. This led to the filing of tens of thousands of borrower defense applications by borrowers who alleged that CCI misrepresented the rates at which its graduates were placed into jobs, *i.e.*, job placement rates ("CCI JPR claims"), which the Department decided to generally grant within certain parameters.

The Department also decided to generally approve other specific categories of applications within certain parameters. Some of these were CCI borrower defense applications, including those based on allegations of misrepresentations about the transferability of credits by the CCI-operated Heald College, Everest Institute, and WyoTech campuses ("CCI transfer of credits claims") and those based on allegations of misrepresentations by CCI-operated schools that employment after students' graduation was guaranteed ("CCI guaranteed employment claims"). Others were applications by borrowers from other schools, including those based on allegations of misrepresentations that employment after students' graduation was guaranteed by California campuses of ITT Technical Institute ("ITT (CA) guaranteed employment claims") and those from students who attended American Career Institute ("ACI claims").

From the time when the Department began processing CCI claims through January 2017, all of the borrower defense claims that were approved resulted in a 100% discharge and refunds where applicable; however, thousands of other claims determined to be ineligible for relief were simply moved to the side and the notice of ineligibility was not sent. In total, approximately 62 percent of claims adjudicated by January 2017 were approved. Another 100,000 claims held by the Department as of January 2017 had not yet been adjudicated at that time.

In December 2017, the Department announced that it would use a tiered methodology to adjudicate CCI JPR claims, CCI transfer of credits claims, and CCI guaranteed employment claims. That methodology ("the 2017 methodology") assessed the relief owed to borrowers with such claims based on the extent to which CCI borrower defense applicants in a given program generally had earnings similar to those of completers of similar programs that had a passing debt-to-earnings ratio under the Gainful Employment (GE) regulations (34 CFR part 668, subpart Q). The level of student loan relief calculated and provided under this methodology ranged from a discharge of 10% to 100% of the amount borrowed. Any borrower who was eligible for more than 50 percent relief was given full loan relief.

The December 20, 2017 press release announcing the 2017 methodology justified the methodology by citing “[t]he principle of relief based on value of education received...”¹ The memorandum² explaining the mechanics of the 2017 methodology stated that the methodology “was developed to provide borrowers relief consistent with and appropriate to the harm they incurred from the misrepresentation by CCI, thereby making them whole” and that it was “rooted in a determination of the value of the claimant’s CCI education, as calculated by comparing average earnings of CCI claimants who attended a given academic program to those who attended similar programs at schools the Department has determined adequately prepare students for gainful employment.” Similar language was used to justify the amount of relief provided to borrowers in the individual decision letters to CCI borrower defense applicants who received relief under the 2017 methodology.

Since May of 2018 the Department has been unable to use the 2017 methodology to determine relief for adjudicated BD claims. The Department cannot currently use the 2017 methodology because the Department no longer has access to the same data source moving forward and because the preliminary injunction is still in place. As of November 12, 2019, the Department had received over 290,000 borrower defense applications, and more than 225,000 of those applications remained pending.

III. Standard deviation methodology as a rebuttable presumption for borrower defense relief

The relief methodology, like the 2017 methodology, provides relief to successful borrower defense applicants based upon a comparison of the program-level earnings for graduates of the specific program at the borrower’s school that is at issue in the borrower defense application, with the earnings of graduates at the same or similar program at other schools. As with the 2017 methodology, this new methodology would provide for tiers of relief, but those tiers would be based on the quartiles, with 100 percent relief being awarded to successful borrower defense applicants whose program’s median earnings were at or lower than two standard deviations from the median earnings of graduates of similar programs at other schools. Successful BD applicants whose median program earnings are higher than two standard deviations below the median, but lower than the median of the comparison group will generally be awarded 25 percent, 50 percent, or 75 percent relief.

A. Rationale for using earnings as a measure for relief and for establishing the standard deviation methodology as a rebuttable presumption

¹ Available at <https://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers>.

² Available at <https://www2.ed.gov/documents/press-releases/borrower-defense-relief-methodology-cci.pdf>.

In assessing the appropriate measure of relief, it is important to note that the majority of borrower defense applicants have not provided the Department with evidence of or supporting the scope of their harm to support their claims, likely because the Department did not require such evidence when they applied. Even though the Department has determined that certain CCI borrowers made a prima facie case for borrower defense relief, the borrowers have generally not provided evidence of the resulting harm or as to the scope of such harm. Accordingly, the Department has examined other evidence in its possession to assess the relief to be provided to borrowers.

The new methodology is based on a determination of the harm suffered by a successful BD applicant as a result of the misconduct, as determined by comparing earnings imputed to the BD applicant against earnings of a representative comparison group. The level of harm measured in this way can also be said to reflect the quantifiable lack of value conveyed by a borrower defense applicant's education. Using comparative earnings, generally available data can be used to focus on the harm that is actually attributable to the program the applicant was enrolled in by comparing earnings information for that program to a group of similar comparable programs offered by other institutions that the applicant might have otherwise attended.

Using program-level earnings, both as imputed to the borrower defense applicant and for the comparison group, is appropriate because this approach provides an objective look at the harm and lack of value to be derived from a specific program caused by a pattern of misconduct by a school, when compared to similar programs in the educational marketplace. An individual's earnings could be influenced by a multitude of factors other than the education they received at a college or university. However, taking the median of earnings among a cohort of program graduates provides a summary statistic based primarily on the common experience of program participants, gives more weight to factors shared among participants because of their shared participation in the program than to factors that vary across the different participants. Therefore, median earnings of program graduates are imputed to the successful BD applicant.

This approach differs from that taken before December 2017 for the CCI claims, including CCI transfer of credit claims, CCI guaranteed employment claims, and the ITT (CA) guaranteed employment claims.³ As explained by the Department in December 2017, with the benefit of reviewing the GE earnings data published by the Department in late 2017, the Department was able to further analyze the value conferred by the educations received by students attending CCI schools. Through that analysis, the Department determined that tiered, or partial, relief for CCI JPR claims applicants and applicants with CCI-related claims categories applications was appropriate. The Department continues to believe that the 2017 methodology is

³ ACI claims are not discussed here because all students from ACI were given 100% relief on a group basis, without requiring the submission of applications from the students given the nature of the misconduct at issue for that school, so there are no remaining ACI claims that could need to be adjudicated in the future.

a sound way to determine relief for all CCI-related borrower defense claims. However, a federal district court has preliminarily enjoined the Department from using the methodology in the lawsuit *Manriquez et al. v. DeVos*, Case No. 17-cv-07210-SK (N.D. Cal.).⁴ Further, many borrower defense claims not covered by the class certified in that case (consisting of CCI claims borrower defense applicants) have been pending for years.

As a result, given the Department's interest in providing borrowers with timely borrower defense relief in addition to its interest in creating easily administered rules for relief, the Department has determined that it is appropriate to apply the new standard deviation methodology, which follows the same principle that the harm to a borrower (attributable to lower program value) can be assessed in terms of the difference between a program's earnings and the earnings of similar/same programs at other schools, to borrowers that were originally covered by the 2017 methodology who are not in the *Manriquez* class (*i.e.*, borrowers with CCI guaranteed employment claims and CCI transferability of credit claims). Further, it is appropriate to apply this methodology to ITT (CA) guaranteed employment claims and to similarly-established categories of claims established in the future, because this comparative analysis will reveal whether a borrower has been harmed as a result of the misconduct, in comparison to his or her peers at other schools.

We are establishing the amount of relief to be provided through the standard deviation methodology as a rebuttable presumption. This adjudicatory process to determine relief enables the Department to exercise its discretionary powers while preserving its flexibility and the opportunity to make individualized determinations. The Department will inform applicants that they may use the reconsideration process described in 34 C.F.R. § 685.222(e)(5)(i) to challenge the initial determination of relief in light of their individual circumstances.

B. The standard deviation methodology tiers

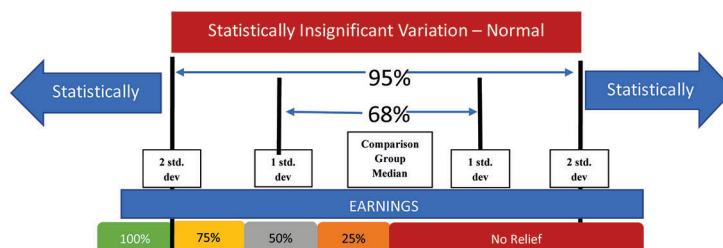
The standard deviation methodology will generally award full relief to an otherwise successful BD applicant if the borrower's imputed median earnings are less than or equal to wages that are two standard deviations below the median wages of the comparison group. As described above, earnings would be imputed to a borrower and to a comparison group based on the median earnings of graduates of the program in which the applicant was enrolled or median earnings of graduates of similar programs. The median wage for the comparison group would be the median of the medians of the program level earnings calculated for graduates based on a 4-digit classification of instruction program ("CIP") code and the credential level.

⁴ The Department has appealed from the district court's order, but the appeal is still pending before the Ninth Circuit.

Standard deviations are used to identify statistically significant earnings differences since even among programs of equal quality, median earnings could differ based on the part of the country in which graduates are employed, the socioeconomic level of students prior to enrollment, the age and gender of the students (which could influence the likelihood that graduates would choose part-time work over full-time work) or the selectivity of the institution, among other things.

In a normal distribution, approximately 68% of the data points in the sample will fall within one standard deviation above and one standard deviation below the median. Approximately 95% of all data points in the sample will fall within two standard deviations from the median. Therefore, median earnings at or below the earnings that are two standard deviations from the median should result in full relief to successful BD applicants since it is at this point where differences between data points is considered to be statistically significant. This does not mean that programs with earnings lower than two standard deviations from the median are necessarily bad programs, but in attempting to develop a methodology to determine the harm suffered by a borrower as a result of misrepresentation, the Department will rely on scientific convention and establish that only earnings differences that are statistically significant (more than two standard deviations below the median) should qualify a successful BD applicant for full relief.

Successful BD applicants whose earnings are higher than the threshold that is two standard deviations below the median, but lower than the median would generally receive partial relief. To determine the level of partial relief such a borrower would receive, the Department could simply divide the difference between median wages and wages two standard deviations below the median by three to establish three tiers of relief between 0% and 100%. In other words, successful BD applicants whose program earnings were less than the median could be awarded 25, 50, 75 or 100 percent relief, depending upon where their program median earnings fall in the range.



C. Data

Using 4-digit CIP codes and credential levels, the Department will impute earnings to the borrower by determining the median earnings of the graduates of the BD applicant's program. The Department has determined that 4-digit CIP codes provide the greatest coverage of programs and allow the Department to adjudicate a larger number of claims using the borrower's program and credential level. The program-level earnings data that will be used to calculate relief under the standard deviation as a rebuttable presumption will differ depending on several different factors as described below.

- Programs that are both (a) non-operational, and (b) for which there is 2014 GE earnings data: For programs that are both (a) closed and non-operational as of the date of this Memorandum, and (b) for which there are 2014 earnings data as a result of the GE regulations (the "GE earnings data"),⁵ the Department will use these data to establish the borrower defense applicant's program earnings, and the earnings for the comparison group.
- For programs for which there is no 2014 GE earnings data, but there is other publicly-available data at the 4-digit CIP code level: For programs for which there are not 2014 GE earnings data, earnings data from other publicly available sources should be used, such as data currently being disclosed on the Department's website as part of the College Scorecard.
- For programs for which there is no earnings data for the credential or at the 4-digit CIP level: The Department may not have earnings data for the program at issue as either a part of the GE earnings data or in future publicly available data. In such a case, the Department will use earnings from graduates of similar programs based on the 4-digit CIP code, but at the next highest credential level, to impute borrower and comparison group earnings. If sufficient data are not available to make that determination, then the Department will review program level outcomes for other programs offered by the institution (and the relevant comparison group) using the 2-digit CIP code and credential level (or the next higher credential level if available, and if not, the next lower credential level) and award to borrowers the highest level of relief that would be awarded to borrowers in any of those programs. In the event that there are no other programs with the same 2-digit CIP code, the Department will

⁵ The GE disclosure earnings data is data obtained from SSA as to the mean and median annual earnings of a cohort of students who completed a GE program during a specified cohort period. At least 10 completers from a program must be matched for SSA to return mean and median earnings information for disclosure purposes, while there must be at least 30 students in the cohort sent to SSA for the Department. This data is publicly available on the Department's website and the use of this public data is not enjoined by any court action. The Department has this data for calendar year 2014 and will not be able to obtain it for any other years.

award to those successful BD applicants the highest level of relief awarded to any successful BD applicant who received relief calculated under the 2017 methodology or the standard deviation methodology.

The above describes the standard deviation methodology as a rebuttable presumption. The following explains how this approach relates to the date of the misconduct. For programs that are no longer in operation but were included in the 2015 GE earnings data published on the Department's website, the use of GE earnings data for determining harm is appropriate. These earnings data were provided to the Department by the Social Security Administration (SSA), under a now-expired Memorandum of Understanding (MOU), and are already published in the public domain. However, the Gainful Employment rule has been rescinded and the SSA has not signed a new MOU with the Department, so for the foreseeable future, new SSA earnings data will not be made available to the Department. The Department would be significantly delayed if it were to request from the Internal Revenue Service more recent earnings data on these cohorts of students; such a data query may not be permitted under the Department's current MOU with the Department of the Treasury.

However, for programs that are still operational, the College Scorecard will serve as the data source for program-level median earnings for both the borrower's program and the similar comparison group program. College Scorecard earnings data are provided by the Internal Revenue Service, with whom the Department has an MOU for data sharing. Because College Scorecard data will be updated annually, the Department will have access to an on-going source of earnings data for adjudicating future BD claims.

The Department will use the most recent College Scorecard data to determine harm for successful borrower defense applicants, except in instances in which a program was discontinued earlier and is not included in the most recent College Scorecard data. In such a case, the Department will go back to the most recent College Scorecard data which included earnings data for that program, and calculate harm using program data and comparison group data from that year's College Scorecard data. The Department seeks to use the most recent data available to impute earnings to the borrower and to determine the comparison group earnings levels. Currently the College Scorecard includes only first year earnings data, since program level data were not reported to the Department prior to 2014-2015. Over time, the College Scorecard will capture earnings at different intervals following completion, such as one, three, five and/or ten years after completion. When sufficient data are available, the Department will use multiple-year earnings data (e.g., three- or five-year data) to calculate relief.

D. Scope of application

The standard deviation methodology will be applied to:

- 1) CCI guaranteed employment claims;
- 2) CCI transfer of credit claims;
- 3) ITT (CA) guaranteed employment claims; and
- 4) All other non-CCI JPR claims.

IV. Legal authority to determine the amount of the relief for borrower defense claims

The statute and the Department's regulations allow the Secretary to exercise reasonable discretion to determine the amount of relief to borrowers. A borrower defense applicant with a meritorious claim should receive federal student loan relief proportionate to the difference between the earnings being made by graduates of the applicant's program, as compared to the earnings of his or her peers at other schools. This approach to relief properly reflects the Department's interest in protecting the federal taxpayer while also treating borrower defense applicants consistently and equitably. Further, the standard deviation methodology as a rebuttable presumption is an appropriate way to calculate that difference and establish tiers of relief.

A. Legal authority to establish a methodology to adjudicate borrower defense claims

The language of the borrower defense regulation clearly establishes that the Secretary has the discretion to determine the amount of relief to provide to a successful borrower defense applicant. At other times the Department has taken the position internally that the amount of relief is subject to the Secretary's discretion, relying upon this regulatory language. At other times in the past, however, the Department has taken the position internally that the amount of relief due to BD applicants is dictated by state law. This position was based on an extension of the application of state law in the adjudication of BD claims under the 1995 regulation to the determination of relief and reliance on the example of the approach taken by courts in consumer protection cases, but it did not clearly address or distinguish the regulatory language supporting the Secretary's discretion. The Department's current position is that the amount of relief is a matter of the Secretary's discretion, given the clear language in the regulation.

The borrower defense statute does not require the Department to award relief to successful applicants in any particular fashion. The only statutory limit on the Secretary's ability to grant relief is that no student may recover in excess of the amount the borrower has repaid on the loan. *See* 20 U.S.C § 1087e(h). While the original version of the Department's regulation, 34 C.F.R. § 685.206(c)(1995), required a claimant to allege an act or omission that would "give rise

to a cause of action” under “applicable state law” in order to be eligible for BD relief, the rule did not direct the Department to award relief to a claimant based on state law principles of restitution or damages. Instead, that regulation clearly provided that the Secretary has discretion to fashion relief as suited to the facts of a particular case:

If the borrower’s defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief *as the Secretary determines is appropriate under the circumstances* [including reimbursement to the borrower of amounts paid towards the loan].

Id. at § 685.206(c)(2) (emphasis added). The current borrower defense regulations similarly give the Secretary the discretion to determine the appropriate amount relief:

(1) The Department official or the hearing official deciding the claim determines the *appropriate amount of relief* to award the borrower, which *may* be a discharge of all amounts owed to the Secretary on the loan at issue and *may* include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount.

....

(7) The Department official or the hearing official deciding the case, or the Secretary as applicable, affords the borrower such further relief *as appropriate under the circumstances*....

34 C.F.R. § 685.222(i)(2017).

Thus, relief is a matter of the Secretary’s discretion, and for the reasons described herein, the use of the standard deviation methodology as a rebuttable presumption is an appropriate exercise of the Secretary’s discretion to resolve the borrower defense claims of borrowers with CCI transfer of credit claims, CCI guaranteed employment claims, ITT (CA) guaranteed employment claims, and other non-CCI JPR claims categories to be identified into the future.

B. Departure from previous approaches to relief for the CCI transfer of credit, CCI guaranteed employment, and ITT (CA) guaranteed employment claims

Prior to December 2017, the Department—lacking a methodology to evaluate harm and provide proportionate relief—provided full relief to borrowers who submitted successful CCI guaranteed employment, CCI transfer of credits, and ITT (CA) guaranteed employment claims. Prior to December 2017, the Department did not issue decisions for claims that preliminarily

determined ineligible for relief. After December 2017, the Department provided tiered relief to borrowers with successful CCI guaranteed employment and CCI transfer of credit claims. Borrowers with successful ITT (CA) guaranteed employment claims did not receive relief under the 2017 methodology.

The Department's decisions to provide 100% relief prior to December 2017 to certain successful borrower defense claimants were based on assumptions about the value of the education received by those claimants. The Department cited misconduct by the schools attended by the claimants, such as the misleading statements by CCI employees regarding job placement rates and other fraudulent actions related to job placement, and reasoned that this misconduct severely limited the value of the degree received by the claimants. However, it does not follow from the mere fact of misconduct that the education provided to students had no value. The Department also cited to a series of statements by claimants about how the degree that they received did not have any value. However, anecdotal statements by some number of individual students, even if accurate, do not demonstrate that all claimants from these schools should receive 100% relief. The Department further relied upon the various investigations into the schools' misconduct and the publicity associated with those investigations in concluding that the claimants should receive 100% relief. However, none of the allegations raised against the institutions by several attorneys general has resulted in a final judgment on the merits. And even if negative public announcements regarding investigations into a school significantly tarnished that school's brand independent of the underlying truth or falsity of the allegations against the school, a decrease in the brand value associated with a degree from that school does not remove the value in knowledge and skills acquired by students during the program itself.

In addition, the Department relied upon its practice of providing 100% relief to many other claimants and reasoned that it would not be fair to change that practice for the next group of claimants in the queue. However, the persuasiveness of any prior provision of 100% relief depends on both the correctness of the original decision to provide 100% relief to another claimant and on the relevant similarities and differences between the two claimants. The Department also cited to applicants' difficulty in transferring their credits to another institution, concluding that such difficulty greatly diminished the value of those credits. A decrease in value does not equate to a complete loss of value, however, and the value of credits for transfer purposes is not the only value received by a student. Furthermore, the Department also has determined that transfer of credit limitations are widespread, and often times transfer credits are denied as a result of academic elitism or perceived differences in accreditation standards which have not been substantiated.

The Department's conclusions were ultimately based on the assumption that claimants with successful CCI transfer of credit claims, CCI guaranteed employment claims, and ITT (CA) guaranteed employment claims received "worthless" educations and therefore full discharge was appropriate for all such claimants with valid claims. However, when the Department reviewed

publicly available earnings data, made available as a result of the GE regulations, it concluded that the evidence did not support the idea that the degrees were worthless. Through its analysis of the data, the Department identified instances in which borrowers who graduated from a CCI school earned more than graduates of other institutions. The Department has determined that it would be unreasonable to write off 100% of the loans of a high earning borrower based on a conclusion of “worthlessness” just because that borrower attended a CCI school that engaged in misconduct while expecting a lower-earning borrower not affected by such institutional misconduct to repay their loans. Moreover, the fact that participants in a given program are able to earn high wages constitutes evidence that contradicts the notion that the program had low or no value. Therefore, after a deeper analysis of available data and a comprehensive review of challenges that students in all sectors of higher education face, the Department realized that its earlier broad assumptions about “worthless” education were unfounded and that further analysis was needed to determine the harm a borrower actually suffers when he or she attends a school that engages in wrongdoing sufficient to establish a borrower defense.

As stated by the Department in December 2017, the Department re-evaluated its earlier assumptions, with regard to CCI and ITT borrowers, and determined that many had received an education of equal or better value as compared to their peers and developed the 2017 methodology as a way to align the amount of relief awarded with the degree to which a borrower may have been harmed as a result of the misconduct. As described above, some CCI borrowers received value from their degree as evidenced by the earnings comparison between those who attended CCI programs and those who attended other similar programs. The same principles and rationale apply to the standard deviation methodology for CCI students, as well as for ITT (CA) guaranteed employment claim categories borrowers. Where a comparison of a borrower's program's earnings show that a borrower defense applicant has been harmed by a school's misconduct, the standard deviation methodology will provide relief to the borrower commensurate with the level of harm they suffered, likely as a result of the misconduct which may have robbed the borrower an opportunity to attend a higher-value institution. For those who have been harmed, the amount of debt relief awarded is commensurate with the gap between the median earnings of graduates of the borrower's program and those of the comparison group.

The value of the standard deviation methodology will grow over time as the comparison peer group grows larger and a greater diversity of institutions contribute to the peer group data set. The standard deviation model enables the Department to differentiate between earnings differences that may be the result of low-value education and those that may be the result of the natural variation in earnings among individuals at a single institution or among individuals at different institutions. The standard deviation methodology may provide different amount of relief for a borrower with a CCI transfer of credits or CCI guaranteed employment claim than would have been provided under the 2017 methodology. However, given the Department's inability to continue using the 2017 methodology due to data and litigation reasons, in

combination with the Department's interest in providing timely relief to borrower defense applicants, a new methodology paired with the ability for the Department to make individualized determinations was needed. Further, the standard deviation methodology results in levels of relief that are more reflective of the financial harm to borrowers, making use of the information regarding variability in average earnings numbers as measured by the standard deviation.

Like the 2017 methodology, the standard deviation methodology will provide a minimum floor of 10% relief to CCI borrowers in recognition that, although the data may reveal that the value of the education of a program at issue is comparatively high, borrowers suffer some basic harm by virtue of the Department's statements related to the school's misconduct. Also, the Department recommended that CCI students file BD claims and even provided a specialized form for borrowers to use in seeking relief, making the CCI circumstances unique. As a result, the 10% floor at this point in time will be provided only to CCI applicants that have filed their application as of the date of the Options Memo.

The amount of relief provided by the standard deviation methodology is established as a rebuttable presumption. As stated, this allows the Department to exercise its discretionary powers while preserving our flexibility and opportunity to make individualized determinations.

**Federal Student Aid Enforcement Office
Report on Borrower Defense
October 28, 2016**

This is the first periodic report of the Federal Student Aid (“FSA”) Enforcement Office regarding the work of its Borrower Defense Unit (“BD Unit”). The Enforcement Office assumed management of borrower defense in June 2016, taking over responsibilities that had previously been assigned to the Special Master. Since then, due to the Department of Education’s ongoing outreach efforts to former students of Corinthian Colleges, Inc. (“Corinthian” or “CCI”), there has been a considerable increase in borrower defense claims. Accordingly, the BD Unit’s focus has been to accelerate adjudication of the rapidly increasing number of claims based on the Department’s findings concerning Corinthian’s misleading job placement rates (“findings claims”), as well as to initiate adjudication of claims filed by Corinthian students based on other allegations of misconduct (“non-findings claims”). To that end, as detailed below, since the issuance of the Special Master’s fourth and final report of June 29, 2016, the Department has approved an additional 11,822 findings claims for a total of more than 15,000 findings claim approvals, constituting a total of \$247,370,853 of relief. At the current pace, the Department expects to resolve all pending eligible findings claims by spring 2017. The Department also has identified its first approvals of non-findings claims for students harmed by CCI misrepresentations that their credits were generally transferable to other institutions.

This report will focus on: (1) the ongoing development of the Borrower Defense Unit to meet the demands of submitted claims; (2) the growth of claims submitted and the Department’s progress toward resolving those claims; and (3) the Department’s borrower defense outreach efforts. The report also will provide an update on closed school discharges for former CCI students.¹

I. FSA Enforcement’s Borrower Defense Unit

As stated in the June 29 report, the Borrower Defense Unit is now under the supervision of FSA’s new Enforcement Office. Chief Enforcement Officer Robert Kaye and Deputy Chief Enforcement Officer Laura Kim lead the Office, which encompasses four divisions: Borrower Defense, Investigations, Administrative Actions and Appeals, and the Clery Group. The work of the Borrower Defense Unit will be enhanced by its close interactions with its sister units, which all work to quickly and efficiently identify misconduct at institutions receiving Title IV aid and take appropriate action to protect students and taxpayers.

On October 17, Colleen Nevin joined the Enforcement Office as the new Director of the Borrower Defense Unit, where she oversees a team dedicated to investigating and adjudicating borrower defense claims. Nevin joins the Department after working most recently as an Assistant Attorney General at the Massachusetts Attorney General’s Office, where she investigated and civilly prosecuted consumer protection violations.

¹ While the Enforcement Office does not process closed school discharge applications, we include this information because we recognize that many stakeholders are interested in updated information about the issuance of closed school relief to eligible Corinthian students.

In addition, to meet the rapid increase in claims, the BD Unit also recently added contract attorneys and analysts, on a temporary basis, to assist with ongoing claim review. These additional resources have contributed to the Unit's substantial progress resolving claims.

II. Borrower Defense Claims

a. Claims Received

As a result of the ongoing outreach efforts to borrowers detailed below, the Department has seen a large increase in the number of claims submitted. Significantly, the recent postal mail campaign to Everest and WyoTech borrowers nearly doubled the total number of claims received. The Department has now received a total of approximately 82,000 claims.² Once a claim is submitted and processed through intake, borrowers' loans are placed in forbearance or stopped collections until their claim is resolved, unless they opt-out.³

Based on the number of claims that have been processed through intake, approximately 60% of the Corinthian claims have been filed by borrowers who enrolled in CCI schools during the time periods covered by the Department's findings. Many of these claims are from borrowers who attended programs that the Department found had been publicized with misleading job placement rates. All of these claims that are not granted on the basis of the Department's findings will also be reviewed to determine whether relief is warranted on other bases. We also have more than 4,000 pending applications from borrowers who attended non-CCI schools.

b. Claims Adjudicated

i. Corinthian Findings Claims

As of the last report on June 29th, the Department had approved a total of 3,787 claims based on the Department's findings. As of October 12, the Department has approved an additional 11,822 findings claims. Details on the amount of the discharges associated with these claims are in the table below. Assuming the current rate of approval is sustained, the Department expects to resolve all pending eligible findings claims by the spring of 2017.

School	Findings Claims Approved for Discharge through 10/12/16	Total Amount of Loans Approved for Discharge through 10/12/16
Heald	5,490	\$104,085,830
Everest	8,146	\$116,874,687
WyoTech	2,058	\$26,410,336
Total	15,694⁴	\$247,370,853

² This total number may include some duplicate or incomplete claims that will not be identified until all of the claims have been processed through intake.

³ Note that, in limited circumstances, borrowers will not be placed in forbearance because they are still in their grace period, or otherwise in a status where forbearance would not be beneficial.

⁴ This number is higher than the total number of findings applications approved because some borrowers attended multiple schools.

ii. Corinthian Non-Findings Claims

In addition to this significant progress on findings claims, the BD Unit also has made progress on the pending non-findings claims submitted by former Corinthian students. The BD Unit has conducted a thorough investigation into the practices of Corinthian personnel, including reviewing thousands of pages of internal documents, documents obtained from other state and federal agencies, publicly available documents, as well as the personal narratives contained in thousands of borrower defense applications. Based on this work, the BD Unit has identified the most common categories of claims made by CCI borrowers and whether and under what circumstances borrowers should qualify for relief on the basis of the claim. While these efforts are ongoing, the Department is now prepared to issue relief for the first category of such claims.

At the time of this publication, the BD Unit has identified 293 claims for approval on the basis of misrepresentations CCI made about the general transferability of its credits. These applicants will be eligible for relief subject to the applicable state statute of limitations. Although this is a limited number compared to the universe of claims, additional claims alleging this misrepresentation will now be processed for relief.

iii. Denial of Claims Not Eligible for Borrower Defense

Finally, in addition to the approvals noted above, the BD Unit also has resolved 245 claims that do not qualify for relief. These claims are being denied because the claims are not eligible under the Department's findings (*e.g.*, the applicants did not enroll during the findings time periods or did not enroll in eligible programs) and do not allege any other basis for borrower defense relief. The Department will inform these borrowers of the basis for the denial. The Department also will inform borrowers that they may re-apply if they have new information bearing on their claim or if they would like to allege another basis for relief not included in their original application. The Department also is updating its borrower defense hotline to ensure that it can assist these borrowers who may have questions about their loans or the status of their loan forbearance. In addition, for any of these borrowers who may also be eligible for closed school discharge, the Department will inform them of their potential eligibility.

III. Outreach to Potentially Eligible Corinthian Borrowers

The Department has pursued various methods to inform borrowers that they may be eligible for borrower defense relief and other forms of loan discharges. In addition to accelerating its adjudication of claims, the Department has expanded its direct outreach to potentially eligible Corinthian borrowers who have not yet submitted applications. As detailed below, this ongoing work includes expanded postal mail outreach, a Facebook advertisement pilot, a servicer pilot that relies on emails, postal mail, phone calls, and texts, an outreach partnership with state attorneys general, and publication of a new "universal form" for public comment. The Department expects that the finalization of the universal form will facilitate future outreach and educational efforts to borrowers who may be eligible for borrower defense relief. Finally, the Department also has made considerable efforts to inform students of recently closed schools about their options, whether through transfer or closed school discharge.

a. Postal Mail Campaign

Since the last borrower defense report, the Department completed its postal mail campaign to over 280,000 Everest and WyoTech borrowers who enrolled between 2010 and 2014, the period covered by the Department's findings. The Department estimates that this postal campaign yielded over 30,000 additional borrower defense applications.

b. Facebook Pilot

The Department also has experimented with new types of outreach. The Department recently conducted a pilot that deployed 219,000 Facebook ads to users who had expressed an interest in Heald College, one of the Corinthian schools. For example, the pilot directed ads to users who had indicated they attended Heald College. Evidence from the pilot suggests that this type of outreach may be effective to direct certain borrowers – including those relying on mobile devices – to relevant information on the Department's website. The Department continues to evaluate the appropriate circumstances for this type of outreach to borrowers.

c. Servicer Pilot

Additionally, the Department is launching an outreach pilot with all of its servicers. Through the pilot, each servicer will communicate with a subset of Corinthian borrowers using emails, letters, outbound calls, or texts. The pilot will help the Department determine the efficacy of each of these modes of communication, as well as whether emails and letters from the servicer may be more effective for reaching eligible borrowers than communications directly from the Department. The results of this pilot, which we expect to have this winter, should provide the Department with information to guide its future outreach to students from other institutions.

d. Partnership with State Attorneys General

In addition to these internal efforts, the Department also is working closely with state attorneys general from across the country to conduct outreach to former CCI students from their states. These 42 state partners, as well as the Attorney General of the District of Columbia, will use a variety of methods – including email, postal mail, telephone calls, and events – to reach more Corinthian borrowers. The Borrower Defense Unit would like to especially thank the Illinois and Maryland Attorney General's Office for their leadership and coordination of these efforts, as well as the Massachusetts Attorney General's Office, which has already gathered and submitted a large number of claims from borrowers who attended campuses in Massachusetts. The BD Unit thanks all of these state partners for their commitment to helping the eligible borrowers in their states.

e. Universal Form

The Department is in the final stages of developing a "universal form" that would provide more guidance to all borrowers on how to apply for borrower defense. The Department revised the form based on the many useful comments received through the first round of required Paperwork Reduction Act clearance and, as of October 17, 2016, is in its second round of comments (see <https://www.gpo.gov/fdsys/pkg/FR-2016-09-28/pdf/2016-23400.pdf>). The Department expects to publish the final form along with additional guidance about the application process on its website later this year.

As noted in the last Special Master report, the universal form also will include detailed information specific to FFEL borrowers. In the meantime, eligible students should visit StudentAid.gov/borrower-defense to learn what to include in a borrower defense submission and how to submit an application. Application materials may be submitted via email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 429060, San Francisco, CA 94142.

IV. CCI Closed School Claims

Although it has now been more than a year since the April 27, 2015 closure of Corinthian schools, the Department continues to process claims from former Corinthian students that opt to pursue a closed school discharge. The Department last reported that, as of June 24, CCI borrowers had filed 12,254 applications for closed school relief, of which 7,386 were eligible, resulting in \$97,613,625 of relief to borrowers. As of October 12, there are now a total of 13,010 closed school discharge applications that have been received, resulting in 7,858 approvals, for a total of \$103,050,594 of relief granted. Approximately 189 closed school discharge applications are pending. To date, 4,963 applicants for closed school discharge (38%) have been denied relief, most commonly because: (1) the application was incomplete; (2) the borrower withdrew from their program prior to the June 20, 2014 deadline; or (3) the borrower completed their program of study (either at the closed school or another school to which they were able to transfer their credits). The chart below shows the number of claims granted by school.

School	Applications Received as of October 8	Applications Granted as of October 12	Total Loans Approved for Discharge
Heald	7,623	5,062	\$73,321,497
Everest	3,929	2,282	\$25,544,812
WyoTech	1,458	514	\$4,184,285
Total	13,010	7,858	\$103,050,594

The Department is also taking steps to ensure that all Corinthian borrowers who are eligible for a closed school discharge receive that discharge. Through the Borrower Defense final rule, the Secretary is exercising his authority to implement new and amended regulations specific to automatic closed school discharges on a faster timeline than other elements of the new regulation. As a result, all Corinthian borrowers who may be eligible for closed school discharge stand to benefit from a streamlined discharge process over the next year.

V. Conclusion

Adjudicating borrower defense claims is an important part of the Department's ongoing efforts to protect students and ensure greater accountability among institutions receiving federal student aid. While the Department has laid a strong foundation for this process, much work remains ahead — not only for former Corinthian students but also for students subject to misconduct by other institutions. This work includes implementation of the Department's final Borrower Defense rule, which goes into effect on July 1, 2017, and creates a new federal standard for borrowers whose loans disbursed on or after that date. The Enforcement Office looks forward to working with its stakeholders to ensure that the BD program fulfills its mission and the important goals of the new regulation. To that end, the Enforcement Office will continue to publish periodic reports on the Borrower Defense program and its work on behalf of students and taxpayers.

**Statement of Chairman Scott– Extension of Remarks
House Education and Labor Committee Hearing:
“Examining the Education Department’s Implementation of Borrower Defense”
Thursday, December 12, 2019
9:00 AM
Rayburn 2175**

During this hearing Secretary DeVos repeatedly blamed the previous administration for the present situation regarding borrower defense, claiming that there was “no process in place to actually consider the claims” and that the “previous administration weaponized the regulation against schools it simply did not like.” These statements represent a fundamental misreading of the facts.

The Department of Education began an investigation in Corinthian Colleges over its falsification of placement rates in 2013 and in 2014 asked Corinthian for data regarding their placement rates.¹ After Corinthian failed to provide this data, the Department placed Corinthian on heightened cash monitoring in June 2014.² Placement on heightened cash monitoring revealed the true extent of Corinthian’s financial difficulties, and it quickly became evident that the company was no longer able to continue operations without the Department’s assistance. Accordingly, Corinthian entered into an operating agreement with the Department that provided students attending Corinthian the opportunity to finish their education, while the company worked to either sell or close all its campuses within six months.³ It is important to note that these financial difficulties were in no way related to the borrower defense regulation. The fact that these difficulties with Corinthian were allowed to grow for so long is based on both shortcomings regarding the Department’s calculations of Corinthian’s financial composite score, along with accounting tactics undertaken by Corinthian which violated Department regulations and led to sanctions by the Securities and Exchange Commission (SEC).⁴

In March 2015, the Department requested a letter of credit from Corinthian after they failed to file audit financial statements, and in April of the same year a fine letter was issued against Corinthian at the conclusion of the investigation into their falsification of placement rates.⁵ Specifically, the Department found that, Corinthian falsified placement rates by, “counting students as placed based in jobs they held before enrolling at Corinthian, creating temporary unsustainable jobs for its students and counting those students as placed, and counting students as

¹ June 19, 2014 Department of Education Press Release, “U.S Department of Education Heightens Oversight of Corinthian Colleges,” <https://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>.

² *Id.*

³ June 23, 2014 Department of Education Press Release, “U.S Department of Education signs plan to protect students by avoiding immediate closure of Corinthian Colleges,” <https://www.ed.gov/news/press-releases/us-department-education-signs-plan-protect-students-avoiding-immediate-closure-corinthian-colleges>.

⁴ February 25, 2019 Securities and Exchange Commission Press Release, “SEC Charges Former Executive Officers for Their Roles in Corinthian College’s Disclosure Failures,” <https://www.sec.gov/litigation/litreleases/2019/lr24410.htm>.

⁵ April 14, 2015 Department of Education Press Release, “U.S. Department of Education Fines Corinthian Colleges \$30 million for Misrepresentation,” <https://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>.

placed when their jobs were unrelated to the education they received at Corinthian.”⁶ Shortly after the issuance of this fine letter, Corinthian announced the closure of their remaining campuses, and in May 2015 they filed for bankruptcy. It was not until after the collapse of Corinthian Colleges that borrower defense claims started to be made in large numbers.⁷

Likewise, the collapse of ITT Educational Services – also unrelated to the borrower defense regulation – occurred while under investigation by the Consumer Financial Protection Bureau, the SEC, and numerous state attorney generals. ITT’s closure was triggered by its accreditor, the Accrediting Council for Independent Colleges and Schools (ACICS), which placed ITT on a show cause, questioning their “administrative capacity, organizational integrity, financial viability and ability to serve students in a manner that complies with ACICS standards.”⁸ After determining that ITT was “unlikely to become in compliance” with the accreditation criteria, the Department of Education prohibited ITT from enrolling new students who use federal financial aid and increased their letter of credit requirement from \$124 million to \$247 million.⁹ Shortly thereafter, ITT announced it was closing all its campuses affecting more than 40,000 students.

On June 25, 2015, in response to the expectation that large numbers of former Corinthian students would seek relief for their loans through borrower defense, the Department appointed a special master charged with developing, “a system for providing debt relief to borrowers that is fair, transparent, and efficient, with minimal burden on borrowers.”¹⁰ The special master’s initial focus was claims from students who had attended the Corinthian subsidiary Heald College, where the Department had made specific factual determinations of wrongdoing regarding the falsification of placement rates. Additional findings included those against Corinthian’s Everest and WyoTech schools in California, along with Everest online programs based in Florida that were made as part of joint investigation with the California Attorney General. The findings were gathered from a multi-year investigation regarding misrepresented job placement rates at an additional 71 campuses.

According to the special master, these findings were made after working with law enforcement to gather relevant evidence and based upon, “the showing of an act or omission by a school that would support a state law cause of action.”¹¹ Relief was based on a clear process which relied on, “(i) the Department’s analysis of the requirements of its BD regulations (including applicable state law); (ii) findings by the Department, in cooperation with state attorneys general, of misstatements of placement rate data relating to the particular programs attended by the borrowers seeking relief; and (iii) corresponding claims by former students.”¹² This process continued after the Borrower Defense Unit took over management of borrower defense from the special master as evidenced by the October 24, 2016, January 9, 2017, and January 10, 2017

⁶ United States Department of Education, First Report of the Special Master for Borrower Defense to the Under Secretary, September 3, 2015.

⁷ *Id.*

⁸ 8-K filed by ITT Educational Services, August 17, 2016.

⁹ August 25, 2016 Letter from Secretary of Education John King to ITT Educational Services CEO Kevin Modany.

¹⁰ United States Department of Education, First Report of the Special Master for Borrower Defense to the Under Secretary, September 3, 2015.

¹¹ United States Department of Education, Third Report of the Special Master for Borrower Defense to the Under Secretary, March 25, 2016.

¹² United States Department of Education, Fourth Report of the Special Master for Borrower Defense to the Under Secretary, June 29, 2016.

memos from the borrower defense unit entered into the record during this hearing. These memos further illustrate the extensive and documented process, including an evidentiary review, undertaken by the previous administration in reviewing borrower defense claims. The actions of the previous administration stands in sharp contrast to Secretary DeVos' repeated statements that she believes that the prior administration had no process and sought to provide blanket relief, without review of the facts and evidence.

Secretary DeVos has repeatedly emphasized that the Department of Education's Inspector General "found material weaknesses in the previous administration's procedures for approving and denying claims." Yet, the Inspector General cited in its report that they "did not identify any errors in adjudicated claims, that the review for each for the sample claims was properly documented" and that "FSA created policies and procedures for Borrower Defense that have evolved over time as FSA has continued to redefine its processes."¹³

Despite the Secretary's repeated assertions that there were no standards or process there was no review of the facts or evidence, she has yet to give any examples of any borrowers who received a discharge on a frivolous basis. This is because every single loan forgiven under borrower defense by the previous administration was based on a rigorous review of the facts and evidence and only granted for borrowers who fell into the following seven categories, "1) Heald College job placement rate misrepresentation claims, based on a May 2015 memorandum prepared by the OGC and findings in a fine action letter prepared by FSA's Administrative Actions & Appeals Service Group; 2) Everest and WyoTech job placement rate misrepresentation claims, based on findings in an April 2015 document prepared by FSA's Administrative Actions & Appeals Service Group; 3) Heald College transfer of credit misrepresentation claims, based on an October 2016 memorandum prepared by BDU; 4) Everest and WyoTech transfer of credit misrepresentation claims based on an October 2016 memorandum prepared by BDU; 5) Corinthian Colleges guaranteed employment misrepresentation claims, based on a January 2017 memorandum prepared by BDU; 6) ITT Technical guaranteed employment misrepresentation claims for California campuses, based on a January 2017 memorandum prepared by BDU; and 7) American Career Institute, Massachusetts campuses claims, based on a January 2017 memorandum prepared by BDU."¹⁴

¹³ US Department of Education Office of the Inspector General Report, "Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process." December 8, 2017.

¹⁴ Id.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

DATE OF REPORT (Date of earliest event reported): **August 17, 2016**

ITT EDUCATIONAL SERVICES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other
jurisdiction of
incorporation)

1-13144
(Commission
File Number)

36-2061311
(IRS Employer
Identification No.)

13000 North Meridian Street
Carmel, Indiana 46032-1404
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(317) 706-9200**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Item 7.01. Regulation FD Disclosure.

As previously reported, on April 20, 2016, ITT Educational Services, Inc. (the "Company") received a letter from the Accrediting Council for Independent Colleges and Schools ("ACICS") informing the Company that the nature of certain adverse information since 2014 regarding certain financial and regulatory matters confronting the Company and its ITT Technical Institutes (the "Institutions"), including the Company being placed on Heightened Cash Monitoring I, investigations by certain state Attorneys General, pending litigation with the Consumer Financial Protection Bureau and the Securities and Exchange Commission, and the Company's responses to ACICS requests for information, including those involving unsubstantiated allegations, call into question the Institutions' administrative capacity, organizational integrity, financial viability and ability to serve students in a manner that complies with ACICS standards. The ACICS directed the Institutions to show cause at the next ACICS meeting why its current grants of accreditation should not be withdrawn by suspension or otherwise conditioned. The ITT Technical Institutes were required to submit, and did submit, to ACICS specified information responding to these concerns before June 15, 2016, submitted a supplemental response to ACICS on July 16, 2016, and presented its response to ACICS during their August 4, 2016 meeting.

On August 17, 2016, the Company received a letter from ACICS informing the Company that ACICS had acted to continue the show-cause directive for review at the next ACICS meeting in December 2016, for which the Company must provide evidence why its current grants of accreditation should not be withdrawn by suspension or otherwise conditioned. The Company must submit by November 1, 2016, specified information, including additional clarification, regarding various matters, including its policies on placement classification, changes to instructional resources, updates to certain campus retention rates, and updates to various licensing, litigation and regulatory matters.

To date, the Company has provided many regulatory bodies, including ACICS, with hundreds of thousands of records to review and the Company will willingly comply with ACICS's continued requests for additional information. The Company strongly believes that the facts it provides in response to ACICS's requests will continue to demonstrate the Company's and Institutions' compliance with regulatory and accreditation criteria. The Company is confident that it has and will continue to meet the ACICS accreditation standards.

Except for the historical information contained herein, the matters discussed herein are forward-looking statements within the meaning of the Private Securities Litigation Reform Act. Forward-looking statements are made based on the current expectations and beliefs of the company's management concerning future developments and their potential effect on the company. The company cannot assure you that future developments affecting the company will be those anticipated by its management. These forward-looking statements involve a number of risks and uncertainties. Among the factors that could cause actual results to differ materially are the following: the failure of the company to show cause to ACICS' satisfaction that the company's institutions' grants of accreditation should not be withdrawn or conditioned; the impact of adverse actions by the U.S. Department of Education (the "ED"); the inability of the company to fund additional amounts require by the ED; the impact if the ED does not renew its recognition of ACICS; the action by the U.S. Securities and Exchange Commission against the company; the failure of the sale and leaseback of certain of the company's real property to close; the issues or negative determinations related to the restatement of the company's financial statements; the company's failure to submit its 2013 audited financial statements and 2013 compliance audits with the ED by the due date; the impact of the consolidation of variable interest entities on the company and the regulations, requirements and obligations that it is subject to; the inability to obtain any required amendments or waivers of noncompliance with covenants under the company's financing agreement; the company's inability to remediate material weaknesses, or the discovery of additional material weaknesses, in the company's internal control over financial reporting; the company's exposure under its guarantees related to private student loan programs; the outcome of litigation, investigations and claims against the company; the failure of potential settlements to be approved and finalized on the terms proposed or initially agreed to; the effects of the cross-default provisions in the company's financing agreement; changes in federal and state governmental laws and regulations with respect to education and accreditation standards, or the interpretation or enforcement of those laws and regulations, including, but not limited to, the level of government funding for, and the company's eligibility to participate in, student financial aid programs utilized by the company's students; business conditions in the postsecondary education industry and in the general economy; the company's failure to comply with the extensive education laws and regulations and accreditation standards that it is subject to; effects of any change in ownership of the company resulting in a change in control of the company, including, but not limited to, the consequences of such changes on the accreditation and federal and state regulation of its campuses; the company's ability to implement its growth strategies; the company's ability to retain or attract qualified employees to execute its business and growth strategies; the company's failure to maintain or renew required federal or state authorizations or accreditations of its campuses or programs of study; receptivity of students and employers to the company's existing program offerings and new curricula; the company's ability to repay moneys it has borrowed; the company's ability to collect internally funded financing from its students; and other risks and uncertainties detailed from time to time in the company's filings with the U.S. Securities and Exchange Commission. The company undertakes no obligation to update or revise any forward-looking information, whether as a result of new information, future developments or otherwise.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 18, 2016

ITT Educational Services, Inc.

By: /s/ Rocco F. Tarasi, III
 Name: Rocco F. Tarasi, III
 Title: Executive Vice President, Chief
 Financial Officer



August 25, 2016

Kevin M. Modany, CEO
ITT Educational Services, Inc.
13000 North Meridian Street
Indianapolis, IN 46032-1404

RE: Provisional/LOC Alternative
OPE IDs: 00732900 – ITT Technical Institute
03071800 – ITT Technical Institute
00473100 – Daniel Webster College

Dear Mr. Modany:

On August 19, 2014, ITT Educational Services, Inc., (ITT) was cited by the U.S. Department of Education (Department) for its late submission of annual compliance audits and audited financial statements. As a result of this financial responsibility failure, 34 C.F.R. §668.174(a)(3), and beginning in October 2014, the Department permitted schools owned and operated by ITT to participate in the Title IV, HEA programs only under a Provisional Program Participation Agreement (PPPA) for three award years. As a further result of this financial responsibility failure, in August 2014, the Department also required ITT to post an irrevocable, five-year Letter of Credit (LOC) in the amount of \$79,707,879.

Since August 2014, the Department has been actively monitoring ITT's ongoing operations and finances. We have also been continuing to monitor civil litigation filed against ITT by federal and state law enforcement agencies. Moreover, on April 22, 2016 the Department received notification that ITT institutions operating under the Indianapolis, IN and Spokane Valley, WA OPEIDs received a Show-Cause Directive Letter ("Directive") dated April 20, 2016 from ITT's accreditor, the Accrediting Council for Independent Colleges and Schools (ACICS). ACICS directed ITT to show cause why its grants of accreditation should not be withdrawn by suspension or otherwise conditioned.

On June 6, 2016, the Department issued a letter to ITT, wherein the Department both summarized the bases cited by ACICS in its April 20, 2016 directive and described the increased financial risk to the Department, Title IV funds, students, and taxpayers posed by potential ACICS action. As described in the June 6 letter, the Department then required ITT to increase its surety from \$79,707,879 to \$123,646,182. In July 2016, the Department permitted ITT to provide the increased surety in three installments of \$14,646,101 on July 20, 2016, September 30, 2016, and November 30, 2016.

On August 4, 2016 ACICS held the hearing regarding the show cause imposed on ITT Technical Institutes in Indianapolis, IN and Spokane Valley, WA. On August 17, 2016, ACICS informed the Department that ACICS continued both institutions on Show Cause after ITT had submitted information requested by the accrediting agency and participated in the hearing.

Federal Student Aid

AN OFFICE OF THE U.S. DEPARTMENT OF EDUCATION
Federal Student Aid, Multi-Regional and Foreign School Participation Division
830 First Street NE, Union Center Plaza, 7th Floor, Washington, DC 20202-5340
www.FederalStudentAid.ed.gov

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The August 17, 2016 Continue Show-Cause Directive Letter ("Continue Directive") continues to question ITT's compliance with a number of ACICS accreditation standards, finding that ITT has not demonstrated full compliance. The standards in question are these:

1-2-100(f): the "minimal eligibility requirements" for "compliance with all applicable laws and regulations;"

2-1-809: requirements for student achievement, as measured by retention, placement, and licensure passage rate. Normally, an institution must comply with such standards within a year after being found out of compliance; ACICS questioned ITT's compliance for a period of at least two years;

3-1-202(a): institutional integrity, as manifest in the efficiency and effectiveness of its overall administration of the institution;

3-1-204: financial stability, including having adequate revenues and assets to meet its responsibilities;

3-1-300: administrative capacity, including overall management and record-keeping;

3-1-410: ACICS admissions and recruitment standards; and

3-1-434: federal and state student financial aid administration requirements.

The specific information that ACICS cites in its August 17 Continue Directive continues the concerns that the agency expressed in its April 20, 2016 Show-Cause Directive Letter with respect to the first three grounds expressed in the April 20 letter. It no longer expresses concerns about the quality of instructional materials or development and submission of a teach-out plan. However, its on-going investigation has caused ACICS to add two more concerns which are at the foundation of the educational enterprise and therefore to the actions that the Department must take. The August 17 Continue Directive reiterates ACICS' concern about the financial stability of ITT by noting ITT has an assets to liabilities ratio of 0.72. It also noted the below-standard student achievement outcomes reported for retention rates for eight campuses including the main Indianapolis campus, for both the 2014 and the 2015 years.

According to the ACICS Accreditation Criteria, the Show-Cause Directive is issued "[w]hen the Council determines that an institution is not in compliance, and is unlikely to become in compliance, with the Accreditation Criteria." (Standards Section 2-3-230). Because ACICS has determined, after ITT presented information in response to the Show-Cause Directive and participated in a hearing, that ITT is "not in compliance" and is "unlikely to become in compliance" with ACICS Accreditation Criteria, ITT has therefore failed to "meet the requirements established" by its accreditor, as is required by its PPPA.

In addition, on June 24, 2016, the National Advisory Council on Institutional Quality and Integrity (NACIQI) recommended to the Department that it not re-recognize ITT's accreditation agency.

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Should the Senior Department Official and the Secretary agree, ITT would need to find a new accreditation agency to remain eligible for Title IV funds.

As a direct result of the facts described above, and as further detailed in the Department's letters dated August 19, 2014, August 21, 2014, May 20, 2015, June 8, 2015, October 19, 2015, December 10, 2015, June 6, 2016, and July 6, 2016 the Department is hereby imposing the following conditions on ITT's continued participation in Title IV, HEA programs.

1. Increased Letter of Credit/Surety

Due to this increased risk of the actions taken by ACICS regarding ITT the Department has determined the surety on file must be increased from the current \$94,353,980 to \$247,292,364. This amount represents 40% of the Title IV, HEA program funds received by the Institution during its most recently completed fiscal year.

The purpose of a Letter of Credit (LOC) is to allow for meeting liabilities that would be owed to the Department, such as those that may trigger should the institution precipitously close or terminate classes at other than the end of an academic period. The LOC assures the Secretary that funds would be available from which to make refunds, provide teach-out facilities, and meet institutional obligations to the Department.

In the Department's July 6, 2016 letter, ITT was required to post \$43,938,303 over three (3) installments of \$14,646,101 on July 20, 2016, September 30, 2016, and November 30, 2016. On July 20, 2016 ITT submitted to the Department the first installment of \$14,646,101 and currently has on file surety in the amount of \$94,353,980. The Department is requiring that ITT post an additional \$152,938,654 within 30-days from the date of this letter.

2. Change to Method of Payment Requirements (HCM2)

Effective immediately, ITT Technical Institutes operating the Indianapolis, IN and Spokane Valley, WA OPEIDs are required to make all Title IV program fund disbursements under the Heightened Cash Monitoring 2 (HCM2) payment method, as described in 34 C.F.R. § 668.162(e). The Department reserves the right to offset any federal claims against funds due to both institutions. ITT will receive additional information regarding HCM2 under a separate cover.

3. Notification Requirements for Oversight or Financial Events

Consistent with prior communications, ITT remains required to provide information to the Department by certified mail or electronic or facsimile transmission no later than 10 days after any of the oversight or financial events, as described below, occur. ITT must also include with the information it submits, written notice that details the circumstances surrounding the event(s) and, if necessary, what steps it has taken or plans to take, to resolve the issue. These events include:

- Any adverse action, including probation or similar action, taken against the Institution by its accrediting agency, State authorizing agencies or other Federal agency;
- Any event that causes the Institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a

ITT Educational Services, Inc.
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contingent liability in the Institution's or related entity's most recent audited financial statements;

- Any violation by the Institution of any loan agreement;
- Any failure of the Institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity/net assets from the Institution by any means, including by declaring a dividend;
- Any extraordinary losses as defined in accordance with Accounting Principles Board (APB) Opinion No. 30; or
- Any filing of a petition by the Institution for relief in bankruptcy court.

4. Additional Reporting Requirements

In order for the Department to monitor ITT's progress in improving the Institution's financial stability, ITT must continue to provide information about its operations, finances, and future plans as described in letters dated May 20, 2015, June 08, 2015, and October 19, 2015 letters, and any oral or written modifications to those communications. Please continue to submit the additional reporting documents to the designated contact(s) outlined in the Department's prior communications.

5. Additional Operational Requirements

As a further condition of maintaining its certification to participate in Title IV programs, ITT must adhere to the following requirements, effective immediately:

- ITT Technical Institutes in Indianapolis, IN and Spokane Valley, WA are restricted from enrolling or beginning classes for any new students who may receive Title IV, HEA program funds;
- ITT Technical Institutes operating under the Indianapolis, IN and Spokane Valley, WA OPEIDs must provide all students with a notice disclosing the ACICS Directive and Continue Directive including the fact that ACICS accreditation standards state that the "Council determines that [the] institution is not in compliance with the Accreditation Criteria, and is unlikely to become in compliance."
- ITT Technical Institutes in Indianapolis, IN and Spokane Valley, WA must provide to the Department within 30 days of its receipt of this letter teach out agreements for all ITT campuses and locations operating under OPEIDs 00732900 and 03071800.
- ITT will not pay, or agree to pay, any bonuses, severance payments, raises or retention payments to any of its Management or Directors, as so listed in the Corporate Governance section of the ITT Technical Institute website, at ITTESI.com, as of August 23, 2016, nor to pay special dividends, nor to make any expenditures out of the ordinary course of business and consistent with prior practice, without separate approval from the Department.

ITT's failure to meet any of these requirements will demonstrate to the Department that ITT is incapable of meeting the fiduciary and financial responsibility standards established by the Higher

ITT Educational Services, Inc.
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Education Act and the Department's regulations. Accordingly, the failure to meet these standards will result in the referral of this matter to the Administrative Actions and Appeals Service Group for administrative action, including the potential revocation of the PPAs for the affected OPEIDs.

By signing below, the institution acknowledges and agrees to the conditions specified in this letter, which must be returned no later than 12:00 p.m. (noon) Eastern Time, September 6, 2016.

(Name)	(Title)	(Date)
--------	---------	--------

Surety Requirements

The increased surety is necessary in the event that the Institution would close or terminate classes at other than the end of an academic period. It assures the Secretary that funds would be available from which to make refunds provide teach-out facilities and meet institutional obligations to the Department.

Our records indicate that ITT already has surety on file in a Federal Holding Account with the Department for \$94,353,980 until November 04, 2019. ITT may provide the increased amount by Federal Wire Transfer, or can provide a new LOC in the amount of \$152,938,654. ITT should advise the Department within 10 days of its receipt of this letter whether it will increase the funds maintained in the Department's Federal Holding Account, or provide a letter of credit for that additional amount. The increased surety must be provided under either option within 30 days from the date of this letter.

A sample irrevocable letter of credit is enclosed for ITT to use if it chooses that option. The ITT letter of credit must be issued by a United States bank. Your lending institution must use this format on its letterhead with no deviation in the language contained therein. The letter of credit must provide coverage until November 04, 2019. Please note that if ITT fails to provide the irrevocable letter of credit within 45 calendar days the institution may be referred to the Department's Administrative Actions and Appeals Service Group (AAASG) office for termination and/or other administrative action under 34 C.F.R. § 668.86. Also, note that information regarding the financial analysis score, results, and the LOC is subject to the Freedom of Information Act (FOIA) of 1966, as amended.

Please mail the irrevocable letter of credit to the following address:

Veronica Pickett, Director
Performance Improvement and Procedures Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance

ITT Educational Services, Inc.
Page 6 of 7

830 First Street, NE, UCP3, MS 5435
Washington, DC 20002-8019

ITT is required to notify the SPD within 3 calendar days, in the event the LOC issuing institution should fail, resulting in financial transactions and operations being administered by the Federal Deposit Insurance Corporation. ITT will also be required to submit a new replacement LOC issued by a different and non-failed U.S. bank, within 75 calendar days.

If you have any questions regarding the financial responsibility determination, or disagree with the reason or methodology used for this determination, please contact Tiffany Hill, Financial Analyst, within 10 calendar days at (202) 377-4225.

Sincerely,


Ron Bennett
Director, School Eligibility Service Group

Enclosures: The Department's August 19, 2014 Letter to ITT
The Department's August 21, 2014 Letter to ITT
The Department's May 20, 2015 Letter to ITT
The Department's June 08, 2015 Letter to ITT
The Department's October 19, 2015 Letter to ITT
The Department's December 10, 2015 Letter to ITT
The Department's June 6, 2016 Letter to ITT
The Department's July 6, 2016 Letter to ITT

cc: Kevin M. Modany, Chief Executive Officer (kmodany@ittesi.com)
Rocco Tarasi III, Chief Financial Officer (rtarasi@itt-tech.edu)
Michael E. Diffily, Daniel Webster College President (diffily@dw.edu)
New England Association of Schools and Colleges – CHE (Higher Education)
Accrediting Council for Independent Colleges and Schools
WA Student Achievement
Texas Work Force Commission
PA Division of Private License Schools, Bureau of Postsecondary Services
PA Division of Program Approval Bureau of Academic Programs
AL Commission on Higher Education
Arkansas Department of Higher Education
Colorado Commission on Higher Education
Commission for Independent Education – Florida Department of Education
ID State Board of Education
MO Coordinating Board for Higher Education
TX Higher Education Coordinating Board
Maryland Higher Education Commission
WV Council for Community and Technical College Education

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State Council of Higher Education for Virginia
Minnesota Office of Higher Education
NM Higher Education Department
AL Department of Postsecondary Education
AZ State Board for Private Postsecondary Education
NE Department of Education
SC Commission on Higher Education
OH Board of Regents
CA Bureau for Private Postsecondary Education
MA Department of Higher Education (formerly MA Board of Higher Edu)
Michigan Department of Labor & Economic Growth
Louisiana State Board of Regents
Iowa College Student Aid Commission
NY The State Education Department, Office of Higher Education
NV Commission on Postsecondary Education
Oregon Student Assistance Commission Office of Degree Authorization
KY Council on Postsecondary Education
Tennessee Higher Education Commission
GA Non-Public Postsecondary Education Commission
The Board of Governors of the University of NC
WI Educational Approval Board
UT System of Higher Education
MS Commission on Proprietary School & College Registration
Ohio State Board of Career Colleges and Schools
Oklahoma State Regents for Higher Education
Illinois Board of Higher Education
KS Board of Regents
NJ Commission on Higher Education
Indiana Commission for Higher Education Board for Proprietary Education
NH Dept. of Education, Division of Higher Education



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SEC Charges Former Executive Officers for Their Roles in Corinthian College's Disclosure Failures

Litigation Release No. 24410 / February 25, 2019

*Securities and Exchange Commission v. Jack D. Massimino
and Robert C. Owen, No. 2:19-cv-01374 (C.D. CA/Santa Ana
Division, filed February 25, 2019)*

The Securities and Exchange Commission announced the filing of a settled civil
injunctive action against two former executives of Corinthian Colleges, Inc., for their
roles in Corinthian's failure to disclose material risks related to the company's primary
source of revenue.

[► SEC Complaint](#)

Corinthian, which has ceased operations, was a reporting company listed on NASDAQ
and headquartered in Santa Ana, California. As alleged in the complaint, Corinthian
borrowed tens of millions of dollars from its credit facility immediately before fiscal year
end, to increase the long-term debt it reported to the U.S. Department of Education
(DOE) and the "Composite Score" that ED calculated to determine Corinthian's access to
federal education funds. Immediately after the start of the next fiscal year, however,
Corinthian repaid the year-end borrowing.

In August 2013, after reviewing Corinthian's 2011 financial submissions and score, the
DOE informed Corinthian that reporting such immediately-repaid debt as long-term was
a "questionable accounting treatment" under the DOE's regulations, which improperly
inflated Corinthian's Composite Score. As alleged in the complaint, under the direction of
former CEO Jack D. Massimino and former CFO Robert C. Owen, Corinthian disclosed the
DOE's finding in Commission reports filed in August and September 2013. The reports
omitted, however, that Corinthian had inflated its Composite Scores in 2012 and 2013
with such borrowings, resulting in risk that the DOE would lower Corinthian's Composite
Score for those years, which in turn would jeopardize its future access to federal
education funds and its status as a going concern.

Both Massimino and Owen have agreed to settle the Commission's action. Massimino
has agreed to consent to an injunction against violations of Section 17(a)(3) of the
Securities Act of 1933 and aiding and abetting violations of Section 13(a) of the
Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, and 13a-11, and to pay an
\$80,000 civil penalty. Owen has agreed to consent to an injunction against aiding and
abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and
13a-11, and to pay a \$20,000 civil penalty.

The SEC's investigation was conducted by Robert C. Hannan and Jody Z. Moore, and
supervised by David Reese in the Fort Worth Regional Office. The SEC's litigation is being
handled by Janie Frank and B. David Fraser in the Fort Worth Office and Doug Miller in
the Los Angeles Regional Office.

Modified: February 25, 2019



December 10, 2019

The Honorable Betsy DeVos
 Secretary of Education
 Lyndon Baines Johnson Department of Education Building
 400 Maryland Ave, SW
 Washington, DC 20202

RE: Meeting with former students of the predatory for-profit college industry

Dear Secretary DeVos:

As former students of predatory for-profit colleges, we are writing to ask to meet with you in person as soon as possible.

We have been greatly disappointed in the unfair actions you and your Department have taken against student borrowers. The new borrower defense regulations that you released this summer rolled back basic borrower protections. As students, we fought hard for important provisions like the banning of forced arbitration and class action waivers, the creation of a group borrower defense process, and ensuring automatic loan discharges for students at schools that abruptly closed. Your new regulations reverse all of those protections. It is a slap in the face of students across the country.

In September, you admitted to continuing to illegally collect on the debt of students from Corinthian College in direct violation of a court order, going as far as garnishing the wages and taking the tax refunds of thousands of these students. Your first reaction to the public outcry against these actions was to minimize the harm to students and shift the blame to others. Your actions were so egregious that you were held in contempt of court by a federal judge.

Your Department continues to refuse to follow the law and cancel the loans of more than 200,000 students who were defrauded by for-profit colleges and have pending borrower defense applications. You have the power and legal obligation to cancel those loans right now in their entirety.

These actions are even more upsetting because student voices have not been involved in the process. Meanwhile, the for-profit college industry had seats at the table every step of the way. You currently employ multiple former executives from for-profit colleges.

We have experienced the predatory actions of for-profit colleges first-hand. We were lied to and cheated by these schools – left with a mountain of debt and a worthless education. And we are not alone. We filed borrower defense applications to have these unfair loans cancelled years ago and still have received no response. We’ve repeatedly asked the Department for answers and you have repeatedly turned your back and ignored us.

For years, the for-profit college industry has exploited the promise of higher education, perpetuating a massive fraud on students who are trying to build a better life. These schools target people who are low-income, African-American, Latino, or military veterans. Many of us are the first in our family to attend college. The Department of Education has allowed this to happen, despite its responsibility to act in the interest of students and taxpayers.

We understand that on Thursday, you will be testifying before a Congressional Committee about your policy decisions regarding student borrowers.

As students who are directly affected by your decisions, we are asking for the opportunity to share our stories with you directly – before or after the hearing. Surely, the Secretary of Education can find the time to sit with the very students and taxpayers you are supposed to protect.

You can reach us by calling Lindsey Withem at the Project on Predatory Student Lending, at 617-390-2716.

Please respond as soon as possible. We have no time to wait.

Cordially,

Alicia Davis
Orlando, Florida
Attended Everest College

Jennifer Lezan
Naperville, Illinois
Attended Art Institute of Chicago

Morgan Marler
Fort Hood, Texas
Attended ITT

James Oxley
Feasterville-Trevoze, Pennsylvania
Attended ITT

Janelle Wyatt
Chico, California
Attended Art Institute of California

Amanda Kulka
Dorchester, MA
Attended Everest Institute

United States Department of Education
First Report of the Special Master for Borrower Defense to the Under Secretary
September 3, 2015

On June 25, 2015, Ted Mitchell, Under Secretary of the United States Department of Education (the Department, or ED), appointed me as Special Master tasked with advising the Department about borrower defense issues. I have been asked to help the Department develop processes and systems to provide relief to Federal student loan borrowers who have legal claims against the schools they attended.

My appointment was part of an ongoing effort by the Department to address issues arising from abusive practices of institutional participants in ED student loan programs. It followed years of effort to, in Under Secretary Mitchell's words, "hold career colleges accountable for giving students what they deserve—a high-quality, affordable education that prepares them for their careers," including through increased enforcement activities in this area.

The unfortunate reality is that some colleges, including certain career colleges, have used abusive practices to prey on students. They have made false and misleading statements to students or prospective students about the value of certain career college programs or the financing needed to pay for a program. Such practices can have serious adverse effects for both students and taxpayers. Accordingly, prior to my appointment, Secretary of Education Arne Duncan made it clear that such predatory practices would not be tolerated. He also stated that students affected by such practices would receive the loan relief they deserved under the law.

My paramount goal as Special Master is to develop a system for providing debt relief to borrowers that is **fair, transparent, and efficient**, with minimal burden on borrowers. Under Secretary Mitchell asked me to advise on the creation of a durable process—one that would, consistent with the Higher Education Act, be applicable to the crisis that unfolded with the closure of Corinthian Colleges, but also one that would apply more broadly to students at all institutions who believe they have been defrauded by their colleges. To that end, I have been asked to advise the Department regarding:

- Creation of a simple application for debt relief for all borrowers applying for loan discharges based on borrower defense.
- Issues of law and fact related to borrower defense claims received by the Department.
- The process by which the Department can recover money from schools after successful borrower defense claims.

At the time of my appointment, I stated I would regularly inform students, stakeholders, and the public at large about my work as Special Master. This report is intended to be the first in a series of reports describing the progress the Department has made on this important issue.

Joseph A. Smith, Jr.
Special Master for Borrower Defense
U.S. Department of Education

In this report, I use the term Borrower Defense Program (or BDP) to refer to the Department's plans, systems, and processes designed to enable aggrieved borrowers to assert a defense to repayment of their federal student loans. That right—commonly known as “borrower defense” or “defense to repayment”—emanates from provisions in the Higher Education Act and associated regulations.¹ As I mentioned above, the Department's goal is to make these processes fair, transparent, and efficient. Success requires ensuring that borrowers are aware of their options and can clearly understand the processes so that they can make informed choices about seeking relief. In addition, the BDP should allow borrowers to pursue that defense with as little burden as is possible, consistent with the development of facts sufficient to support the defense. In the interest of efficiency and ease to the borrower, I intend to establish both clear rules of decision about what evidence of wrongdoing is sufficient to provide relief for borrowers and protocols for when similar claims can be treated together and alike. Successful borrower defense claims will not only result in relief to the borrower, but will also have consequences for the school whose conduct created such a defense.

As will be more fully described below, BDP stems from the Department's receipt of an unprecedented number of claims from aggrieved borrowers, and represents new territory for ED. This being the case, BDP will proceed deliberatively to address borrower claims through the development of protocols and precedent based on the facts presented by student claims.² This is critical if the Department is to create a durable system that helps not only the borrowers that already have submitted claims, but also those that may submit claims in the future.

I. Legal and Regulatory Background Regarding Borrower Defense

The following forms the statutory and regulatory framework that guides my work as Special Master.

Section 455(h) of the Higher Education Act (HEA) requires that the Department define by regulation which acts or omissions of a school constitute defenses to repayment of a Direct Loan.³ In 1994, the Department promulgated regulations providing that a borrower may, in any proceeding to collect on a Direct Loan, “assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”⁴

If the borrower's defense is successful, the borrower “is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay.” The Secretary may provide the borrower further relief as the Secretary deems appropriate, including “[r]eimbursement of the borrower for amounts paid toward the loan,” “[d]etermining that the borrower is not in default on the loan” and is therefore eligible for title IV assistance, and

¹ 20 U.S.C. § 1087e(h); 34 C.F.R. § 685.206(c).

² As discussed below, the Department is offering to put Corinthian borrowers who wish to raise a defense to repayment into forbearance so that they do not have to make payments on their loans while this system is being developed and their claims are being reviewed.

³ 20 U.S.C. § 1087e(h).

⁴ 34 C.F.R. § 685.206(c)(1).

“[u]pdating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s Direct Loan.”⁵

In the event of a successful defense to repayment, the regulations authorize the Secretary to initiate “an appropriate proceeding” against the school whose conduct gave rise to such defense “to pay to the Secretary the amount of the loan to which the defense applies.”⁶

The history of the borrower defense regulations and the Department’s interpretation of them are worth noting. The borrower defense rule was first adopted in 1994 as a temporary measure pending promulgation of a rule through the negotiated rulemaking process.⁷ On April 25, 1995, the Secretary of Education convened the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee), which represented all affected parties, including representatives of institutions of higher education, higher education organizations, student loan lenders, guaranty agencies, loan servicers, legal aid organizations, students, and the Department.⁸ During the Committee’s first session, however, the Department was informed that the non-Federal negotiators had all agreed to recommend to the Department that no changes be made to existing regulations. The non-Federal negotiators on the Committee told the Department that they were satisfied that the current regulations adequately addressed the issue of borrower defenses and that no further regulatory action was needed. The Secretary accepted this recommendation, and the Department stated at the time that “the Secretary believes that borrower defenses issues, in particular issues related to the consequences of such defenses, can be adequately addressed by clarifying current regulations and by administrative processes.”⁹

In 1995, the Department issued a Notice of Interpretation providing basic guidelines for the borrower defense process. These guidelines indicated that the Department will acknowledge a Direct Loan borrower’s cause of action under state law as a defense to repayment of a loan only if the cause of action directly relates to the loan or to the school’s provision of educational services for which the loan was provided. The Department will not recognize actions such as personal injury tort claims or actions based on allegations of civil rights violations as defenses to repayment. Under these regulations, the Department looks to the law of the state where the action took place to determine whether to accept the borrower defense.¹⁰

The regulation provides that a borrower may assert, as a defense to repayment, a school’s actions or omissions that “would give rise to a cause of action against the school under applicable State law.”¹¹ The borrower defense regulations speak of the consequences of a “successful” borrower’s defense. By its own terms, the regulation indicates that a borrower’s defense is based on acts or omissions by the school. Thus, for the defense to be successful, the evidence must support the claim that those acts or omissions occurred. Furthermore, the terms of the regulation also indicate that, from a legal point of view, those acts or omissions must be such that they

⁵ *Id.* at § 685.206(c)(2). Direct Loan refers to loans made by the Department under the William D. Ford Federal Direct Loan Program.

⁶ *Id.* at § 685.206(c)(3).

⁷ 59 Fed. Reg. 42649 (Aug. 18, 1994); 59 Fed. Reg. 61664 (Dec. 1, 1994).

⁸ 60 Fed. Reg. 11004 (Feb. 28, 1995).

⁹ 60 Fed. Reg. 37768 (July 21, 1995).

¹⁰ *Id.*

¹¹ 34 C.F.R. § 685.206(c)(1).

would give the borrower a cause of action against the school. In other words, it is the cause of action under state law against the school that establishes an equivalent right to relief from the obligation to repay a Direct Loan. If the relevant evidence, considered as a whole, would not support a state law cause of action, then the acts or omissions asserted cannot be the basis of a defense to repayment.¹²

Nothing in the regulation requires the borrower to be the sole source of evidence establishing a right to relief under state law. Accordingly, on June 8, 2015, the Department took an unprecedented step and announced that it would use existing evidence, where appropriate, to ease borrowers' burden in establishing their eligibility for borrower defense relief:

Wherever possible, the Department will rely on evidence established by appropriate authorities in considering whether whole groups of students (for example, an entire academic program at a specific campus during a certain time frame) are eligible for borrower defense relief. This will simplify and expedite the relief process, reducing the burden on borrowers.¹³

II. Background Regarding Corinthian Colleges' Collapse

The Department's investigation into the falsification of Corinthian Colleges' placement rates began in the winter of 2013. In January 2014, the Department asked Corinthian for data regarding the school's advertised placement rates. Following a back and forth during which the Department pressed Corinthian for placement rate data and Corinthian refused to provide that data, the Department placed Corinthian on heightened cash monitoring status in June 2014.¹⁴

In July 2014, the Department and Corinthian reached an Operating Agreement in which Corinthian agreed to cease operations by teaching out at least a dozen of its campuses and by selling as many of the rest of its schools as possible. The Department also appointed a monitor, Patrick Fitzgerald, the former U.S. Attorney for the Northern District of Illinois, who was charged with overseeing Corinthian's operations and wind-down activities, including its federal student aid draws, its expenditures (including refunds required under the Operating Agreement), and its compliance with its obligations to the Department.

In November 2014, Corinthian agreed to sell 53 of its Everest and WyoTech campuses, covering about 35,000 students, to Zenith, a newly created non-profit organization. In that transaction, the Department secured conduct provisions about Zenith's ownership of its new schools, including provisions about how Zenith would calculate placement rates and the appointment of a monitor to oversee Zenith's compliance with the regulations surrounding the federal financial aid program. In the transaction, the Department settled future liabilities against Zenith that might have arisen from Corinthian's management of the schools for an initial sum of \$12 million, and an earn-out of \$17.5 million over seven years. In contrast, the Department gave no release to Corinthian and indicated that its pending investigations into Corinthian would continue.

¹² See *id.*

¹³ <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>.

¹⁴ Heightened Cash Monitoring is an administrative status that Federal Student Aid can impose on institutions to provide additional oversight for a number of financial or federal compliance issues.

In the following months, the Department continued its regulatory activity. In March 2015, after Corinthian failed to file audited financial statements, the Department requested a letter of credit. In April, the Department concluded part of its investigation into Corinthian's placement rate falsification and issued a fine letter against Corinthian. That fine letter concluded that Corinthian had misled students about its programs by inflating placement rates at its Heald College locations. Corinthian did so by, among other means, counting students as placed based in jobs they held before enrolling at Corinthian, creating temporary unsustainable jobs for its students and counting those students as placed, and counting students as placed when their jobs were unrelated to the education they received at Corinthian. The Department notified Corinthian that it intended to fine Heald \$30 million for those violations, and also ordered that Corinthian stop enrollments at those locations.¹⁵

On April 27, 2015, shortly after the Department notified Corinthian of its intention to impose a fine based on the falsified placement rates, Corinthian announced the closure of all of its schools and then filed for bankruptcy in May 2015. Approximately 13,500 students were enrolled at Corinthian's locations at the time of its closure.

The collapse of Corinthian Colleges was a landmark event for the concept of borrower defense to repayment. In the 20 years between the establishment of these regulations and Corinthian's collapse, borrowers had made borrower defense claims to the Department only a handful of times. As a result, the Department did not have in place an established infrastructure for accepting, processing, and reviewing large numbers of such claims from borrowers. Corinthian's collapse almost immediately produced over 1,000 claims from borrowers for a defense to repayment, before the Department took any action to clarify how to seek such relief. Along with other factors, this significant increase in claims volume necessitated building a durable system to collect, process, and review such claims. The great burden already facing many of the affected students underscored the importance of making this system fair, transparent, and efficient.

In keeping with its desire to use established evidence of wrongdoing, where appropriate, the Department analyzed the applicability of its findings against Heald College to potential borrower defense claims. Because Heald was headquartered in and managed from California, the Department looked to California law and determined that Heald's misrepresentation of placement rates constituted prohibited unfair competition under California's Unfair Competition Law (UCL).¹⁶ Accordingly, students that relied on such misleading placement rates when they enrolled at Heald would have a cause of action under state law. Based on this analysis, the Department created a simple attestation form that allows borrowers to document the inflated rates' impact on them in a manner that supports a cause of action under the UCL. The Department anticipates being able to grant relief to borrowers who provide the necessary information on the form.

¹⁵ The letter detailing those findings is available at <http://www2.ed.gov/documents/press-releases/heald-fine-action-placement-rate.pdf>.

¹⁶ Cal. Bus. & Prof. Code § 17200 *et seq.*

III. Department Actions to Assist Borrowers Seeking Debt Relief

In the wake of Corinthian Colleges' collapse and prior to my appointment as Special Master, the Department took significant steps to help borrowers learn about their options and apply for appropriate loan relief. This section summarizes these steps.

A. Expanded Eligibility for Closed School Discharge

The Department's first set of actions related to closed school discharge. Under the law, if a college closes while a student who has not yet finished her program coursework is enrolled (or soon after she withdraws), that student may seek a discharge of her federal student loans.¹⁷ This relief is available if a student is not completing a comparable educational program at another school. (Completing a comparable program could happen through a teach-out agreement with the school or after transferring credits from the closed school to that new school.)

On April 27, 2015, Corinthian closed its remaining campuses, rendering students enrolled at the time eligible for a closed school discharge. Given the unique circumstances faced by former Corinthian students, the Secretary exercised his authority to expand eligibility for students to apply for a closed school loan discharge by extending the window of time back to June 20, 2014 (instead of the typical 120-day window). This captured students who attended the now-closed campuses after Corinthian entered into an agreement with the Department to terminate Corinthian's ownership of its schools. As a result, about 15,000 students in total are now eligible to have their federal loans discharged through a closed school discharge.

After acting to extend the window back to June 20, 2014, the Department engaged in a multi-prong approach to contact students who were potentially eligible for closed school discharge relief. The Department, through its servicers, sent closed school discharge application forms to potentially eligible students by physical and electronic mail. The Department also placed the closed school discharge application form on the Corinthian information page of the Federal Student Aid website where borrowers could easily access it. As a result of this outreach, the Department has received closed school discharge applications from borrowers at a much greater rate than it has in prior closed school instances (about 500% higher). Information about closed school discharge applications received and discharged is found in section IV below.

B. Help for Students Seeking Relief Based on Borrower Defense

On June 8, 2015, the Department made a series of announcements to help clarify borrowers' options and the borrower defense process.¹⁸ Following those announcements, the Department has provided helpful information and meaningful pathways to relief for former Corinthian students through a number of borrower-facing actions taken by Federal Student Aid (FSA):

- **Forbearance or stopped collections.** Corinthian students who believe they were defrauded by their school and intend to submit claims based on borrower defense can request that their federally serviced loans be placed into forbearance for twelve months while their claim is reviewed. If those loans are in default, they can request that collection activities be stopped. Students can request this relief

¹⁷ 20 U.S.C. § 1087(c)(1).

¹⁸ <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>.

by either filling out a simple web-based form, submitting a request by phone to a dedicated call center, or—for students submitting an attestation form for Heald College programs covered by Department findings—by checking a box on that form. As a result, the burden to the borrower of continuing to make payments on these loans or facing collection activities is relieved while the Department establishes its processes and claims are reviewed.

- **Streamlined relief for certain Heald College students.** As discussed above, the Department made findings that Heald College had published misleading placement rates related to the majority of programs at its campuses between 2010 and 2014. The Department determined that students who relied on misleading placement rates when they enrolled in a program at Heald College could be eligible for streamlined relief based on borrower defense by filling out a simple attestation form and providing other basic information. The Department has posted the list of programs covered by its findings online,¹⁹ and has created a specific online form (also available as a fillable PDF) for affected Heald College borrowers to submit their borrower defense claims.²⁰ Through this form, these borrowers can also request that their federal loans be placed in forbearance or stopped collections while their claim is reviewed.
- **Direct outreach to former Heald College students.** Beginning in July, FSA conducted an email outreach campaign to over 50,000 borrowers who attended Heald College since 2010 to notify them that they may be eligible for debt relief based on borrower defense. That email, sent to borrowers' last known email addresses, provided general information about borrower defense and described the Department's findings related to misleading placement rates published by Heald College. The email provided information about eligibility and linked to both the list of programs covered by the Department's findings and the page where they could fill out the attestation form. Borrowers were also informed how to request forbearance of payments or stopped collection. Additional outreach efforts will continue to ensure borrowers are aware of their options.
- **Dedicated call center for borrower defense information.** A dedicated call center was created to provide guidance and assistance for students seeking to learn more about their options and how to apply for relief. This call center also is processing requests for forbearance or stopped collections from Corinthian students who intend to submit a borrower defense claim. The center has received over 7,000 calls to date.
- **Updated information posted online.** Updated information and frequently asked questions about the availability for relief under the borrower defense regulations, including how borrowers can apply for relief, has been posted on FSA's website.²¹

¹⁹ The list is available here: <https://studentaid.ed.gov/sa/sites/default/files/heald-findings.pdf>.

²⁰ The form is available here: <https://borrowerdischarge.ed.gov/attestation>.

²¹ See here: <https://studentaid.ed.gov/sa/about/announcements/corinthian>.

These actions with regard to borrower defense have resulted in a significant response—summarized in the following section of this report—that has provided me with actionable cases upon which to begin my work as Special Master.

IV. Current Borrower Defense and Closed School Claims

Since the collapse of Corinthian and the announcements made by the Department in early June and subsequent outreach activities, the Department has received several thousand claims from borrowers seeking borrower defense relief, in addition to phone calls to its dedicated call center and emails to a dedicated inbox.

Specifically, as of August 26, 2015, the Department has received the following:

- **Borrower Defense claims: 4,140**
 - Heald Attestation Forms: 1,992
 - ~ 97% reported attending Heald
 - < 2% reported attending Everest
 - < 0.5% reported attending WyoTech
 - < 2% reported attending other schools
 - Other Borrower Defense claims: 2,148
 - ~ 68% reported attending Everest
 - ~ 14% reported attending Heald
 - ~ 6% reported attending WyoTech
 - ~ 11% reported attending other schools
- **Forbearance/stopped collection requests processed: 7,696**
- **Phone calls to dedicated call center for borrower defense: 7,344**
- **Incoming emails to dedicated email inbox: 4,114**
- **Outgoing emails sent to Heald College students: 54,170**

In addition, it is worth noting the numbers of applications from Corinthian students seeking a **closed school discharge**, as some of those borrowers may seek a closed school discharge in lieu of making a borrower defense claim. As of August 21, 2015, the Department has received **7,815 closed school claims** from Corinthian students. Of these, **3,128 have been approved** (representing an estimated \$40 million in loans) with the rest still under review. These claims break down among the Corinthian colleges as follows:

- Everest: 2,359 (925 approved)
- Heald: 4,513 (1,893 approved)
- WyoTech: 943 (310 approved)

V. Building an Infrastructure to Implement BDP

As described above, the number of borrower defense claims received to date is in the thousands. At this point, it is difficult to say how quickly that number of claims will grow, but it is safe to assume it will increase—although it should be noted that not all borrowers that attended affected schools may wish to submit a borrower defense claim. Department leadership agrees that the best way to meet its goal of creating a fair, transparent, and efficient process for handling borrower defense claims is to establish an infrastructure that is flexible and scalable. This will allow the Department to handle current claims in a way that is fair to students, effective, and efficient, and expand the infrastructure as needed to meet future demand.

By “infrastructure,” I mean both the human and physical resources necessary to handle claims, as well as a decision-making framework that will accommodate efficient and fair resolution of borrower defense matters. Current human and physical resources include the ED and FSA personnel and systems devoted to the issue. The Department has recognized the need for additional staff dedicated solely to this issue and committed to hiring staff for that purpose. To bolster that capacity, in addition to myself, the Department has hired four attorneys for the sole purpose of working on BDP so far. These attorneys, who will begin work in early September, will assist me in reviewing the batches of claims that the Department already has received, analyzing the state laws involved in such claims, and developing analytical templates to facilitate claims intake and assessment processes that are scalable and durable. Moving forward, I will recommend adding additional staff or systems capacity as appropriate.

The intellectual infrastructure of BDP will be a set of rules for deciding cases in a consistent way. I will start by analyzing claims where both facts and law are clear, and will develop rules of decision for other cases as my colleagues and I gain experience in reviewing and analyzing claims. The clearest claims at present are claims from Heald College students using the Attestation Form created by the Department that meet the criteria set forth in that form. For other claims, the rules of decision will be based on a review of the factual allegations made by borrowers about, for example, the conduct of school personnel in the inducement of the student to pursue a course of study and take on the debt that is now disputed. Factual information established by state attorneys general, proceedings in state courts, and other federal enforcement agencies is also relevant. Having reviewed a number of claims from various sources, my initial view is that a student’s description about what happened to her, in her own words, will be crucial in developing this set of rules. Creating a durable, fair, transparent, and efficient process will likely require the borrower to provide information about school misconduct that would be available to her.

This process will reduce the burdens on borrowers to the maximum extent possible. I share the urgency felt by borrowers who were defrauded, and believe it is important to reach decisions in this project in a deliberate way that will support the relief that students deserve, protect taxpayers, and justify public trust and confidence in this process. I will do everything possible to serve those goals.

VI. Special Master Outreach and Engagement

In my work as Special Master, I believe it is important to engage with and listen to stakeholders affected by student debt issues, particularly borrowers and those who counsel, represent and

advocate for borrowers. This view is based on my experience as North Carolina Commissioner of Banks and as Monitor of the National Mortgage Settlement, where interaction with counsellors and advocates, while sometimes challenging, was always informative and helpful.

Accordingly, since my appointment I have met with multiple representatives of a large coalition of advocates for debtors on student loans. I have also established email and written communications with several advocacy groups and have received from them detailed proposals regarding borrower defense.

I have also spoken with several State Attorneys General regarding borrower defense and have heard from a number of them regarding a suggested course of conduct for the project. Given the importance of state law to borrowers' defenses and the critical roles that State Attorneys General have played and are playing in regard to this important issue, I value their input immensely and I look forward to working with them to ensure that every borrower receives the relief they deserve with the minimum burden.

As this work continues, I will continue to engage with these and other stakeholders. And I will continue to give their ideas, expertise, and proposals due consideration.

VII. Next Steps

Over the past few months, the Department has made significant process in clarifying borrowers' options based on closed school discharge and borrower defense to repayment, and in building the intake systems to collect borrower defense claims.

Over the coming months, I will continue to work with Department personnel to build a durable system and infrastructure within the Department to review borrower defense claims and discharge loans for eligible borrowers. To that end, I expect to undertake the following efforts:

- Along with newly hired attorneys, review the current inventory of attestation forms from students enrolled in Heald College programs covered by ED's findings. I expect that over the course of the next three months, all Heald attestation forms submitted to this point will be initially reviewed and determinations of eligibility for loan discharges will be made.
- Along with newly hired attorneys, review other borrower defense claims to begin developing rules of decision. When coupled with further consultation and engagement with stakeholders, this review will help the Department develop a streamlined intake form that aggrieved borrowers can use to submit borrower defense claims.
- Advise the Department on further outreach efforts that will help ensure that borrowers are aware of their options in seeking relief.
- Further engage State Attorneys General and other enforcement agencies to discuss pending or past investigations they may have pursued against career colleges; evidence of wrongdoing emerging from those investigations that may be relevant to the Department's borrower defense process; and their own state statutes and case law as it relates to wrongdoing relevant for borrower defense

claims. I will also create processes by which the State Attorneys General can submit evidence developed through their investigatory findings, so that wherever possible, like claims can be treated together and alike.

- Analyze the effects of loan discharge on students' credit reports and engage with credit reporting bureaus on the proper treatment of loan discharge.
- Report to the public on a quarterly basis, beginning no later than November 30, 2015, as to the status of pending assertions of borrower defense and relief granted.

This report is a baseline report intended to inform stakeholders and the public about the current status of the BDP. By necessity, it emphasizes process and start-up issues. Readers should know, however, that the leadership of the Department and I well understand that the success of this effort will be measured in the relief granted to aggrieved borrowers who requested relief and the establishment of fair and transparent rules for future assertion of the defense. To that end, I will continue working to process these claims in an efficient manner and to set up a durable process that can be used for future claims by aggrieved borrowers.

**United States Department of Education
Second Report of the Special Master for Borrower Defense to the Under Secretary
December 3, 2015**

This is my second report as Special Master to the United States Department of Education (the Department or ED) with regard to borrower defense (BD) issues. In my [first report](#), I discussed the legal and regulatory basis for the Department's approach to BD and the sequence of events that led to the establishment of a program to address BD claims (the Borrower Defense Program, or BDP) and my appointment as Special Master. This report will address:

- ED's progress in granting BD and closed school relief to student loan debtors.
- Details on the population of BD and closed school claims under review.
- The standards under which BD relief has been granted and the development of additional rules under which further relief may be granted.

The report that follows shows that we have made substantial progress on a number of BDP goals. My BDP colleagues and I have recommended to Under Secretary Mitchell the granting of \$27,832,370 of relief with respect to 1,312 borrowers making BD claims related to Heald College. Those recommendations were accepted by the Under Secretary and, pursuant to his order, the Department has begun the process of effecting the discharges. Beginning on December 4, 2015, the Department will notify this initial set of borrowers that their claims have been approved. As of November 18, 2015, there are 5,379 open BD claims that remain to be addressed. In addition, as of November 18, 2015, the Department has processed 5,814 closed school claims, comprising \$75,461,790 in loan relief.

This report also discusses areas where work remains to be done—namely: developing rules of decision to resolve future claims and additional engagement with state attorneys general. The BD team and I are working diligently on these matters. I am satisfied that we are developing the protocols and criteria that will allow us to efficiently address these claims. As we proceed, we are gaining the knowledge that only comes from working with claims and that will guide our development of a general purpose BD procedure that is efficient and fair.

My colleagues and I look forward to continued engagement with stakeholders in the BD process.

Joseph A. Smith, Jr.
Special Master for Borrower Defense
U.S. Department of Education

I. Borrower Defense Claims

As discussed in my first report, ED receives BD claims from a number of sources in a variety of formats. A substantial number of BD claims by former Heald College students have been received on an attestation form created by the Department for that purpose (Heald Attestation Form), although that form has also been used by debtors from other schools. (About 3% of the Heald Attestation Forms received are for claims related to other schools). An additional substantial number of BD claims—by former Heald students, former students at other Corinthian Colleges, Inc.-owned colleges, and other students generally—have been submitted in other formats.

As of November 18, 2015, ED had received 6,691 BD claims, collectively representing up to about \$138 million in loans. The claims break down as follows:

School	Number	Percent of total
Heald (Corinthian)	3,356	50.2%
Everest (Corinthian)	1,701	25.4%
WyoTech (Corinthian)	283	4.2%
Art Institute	931	13.9%
ITT	159	2.4%
University of Phoenix	22	<0.5%
Other (no more than 10 claims from one school)	239	3.6%
Total	6,691	100%

II. Borrower Defense Claims Review and Approval

Since my first report, the Department has added staff to review borrower defense claims and has approved the first wave of borrowers for discharges. This section: (i) describes the team reviewing claims; (ii) summarizes the progress made to date regarding claims from Heald College students; and (iii) discusses next steps for reviewing other borrower defense claims.

A. Borrower Defense Program Team

In my first report, I discussed the need for an infrastructure to handle both present and prospective claims. Since that report, four talented lawyers have been hired by the Department to address this work. They have hit the ground running and, in cooperation with Federal Student Aid (FSA) staff, have made a very good start at analyzing claims. The rest of this report is a testament to the hard work of these lawyers and our colleagues at ED and FSA to achieve the BDP objectives. Collectively, I refer to them as the BDP Team.

As the work of the BDP Team has ramped up, it has also become apparent that additional attorneys will be necessary to swiftly analyze claims. Accordingly, I have recommended that the Department add additional attorneys, and the Department has agreed to do so.

B. Approval of Claims from Heald College Students

My first report discussed in detail the legal basis for the Department's view, with which I concur, that relief for BD claims under the current regulations must be based on the showing of an act or omission by a school that would support a state law cause of action. It went on to describe the Department's investigation of Corinthian Colleges, Inc., including the Heald College campuses, and of and the Department's determination, after consultation with the Office of the California Attorney General, that students who relied upon false or misleading placement rate disclosures in enrolling in Heald College programs would have established a BD claim as to which relief would be granted under California law. The Heald Attestation Form provided by ED to student borrowers incorporated each of these elements of a claim as to which relief could be granted.

To focus our initial efforts on claims where relief could be granted on the basis of fully developed facts, the BDP Team first reviewed all claims received from all sources as of September 30, 2015, for Heald student loans where the initial loan advance had occurred on or after July 1, 2010 – the earliest date covered by ED's letter of findings against Heald College (ED Fine Letter).¹ There were 1,670 borrowers that fit these criteria (the Initial Review Population). The BDP Team then reviewed each of the claims in the Initial Review Population to determine whether they met the elements for relief, namely whether they were enrolled in the covered programs for the time periods for which the Department found that Heald College had misrepresented job placement rates.

From this review, 1,312 borrower claims, representing \$27,832,370 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and directed that the necessary steps be taken to give effect to that

¹ ED issued a Notice of Intent to Fine Heald College, dated April 14, 2015.

authorization. The BDP Team will continue reviewing and approving similar claims—including Heald claims received after the September 30, 2015 cutoff date we used—on a rolling basis going forward.

While my team was reviewing these claims, the United States Department of the Treasury (Treasury) analyzed the federal income tax implications of BD relief for students that attended Corinthian schools. Treasury recently issued a revenue procedure regarding the tax implications of discharge for former Corinthian students, concluding that Corinthian students do not need to include discharged amounts in their taxable income. This revenue procedure is available [here](#).

The 1,312 BD claimants approved for relief to date are concentrated heavily in California, where most Heald College campuses were located. There are also significant populations of approved claimants in Hawaii and Oregon, where other Heald campuses were located.

The chart below lists the number of claimants who qualified for relief among the Initial Review Population, based on their state of residence at the time they submitted their claim:

State	Borrower Count	State	Borrower Count
CA	1,062	ID	2
HI	117	AZ	1
OR	72	WI	1
WA	20	OK	1
TX	7	MI	1
FL	5	PA	1
IL	3	KY	1
CO	3	MO	1
SC	3	NE	1
NV	3	GA	1
AK	2	SD	1
LA	2	VA	1

From the Initial Review Population of 1,670 claims, 358 claims remain under consideration. I did not yet recommend relief for those claims because they involved one or more of the following situations: (i) the claimants already had their loans discharged through a closed school discharge; (ii) claimants were enrolled in programs or time periods that were not covered by the ED Fine Letter; or (iii) claimants did not have Federal Direct Loans. It should be noted that these and other BD claims have not been denied; rather, additional consideration, as discussed in the next section, will be required to determine whether and to what extent BD relief may be granted.

C. Next Steps for Other Borrower Defense Claims

In addition to the Heald claims discussed above, a significant number of BD claims have been received from students at schools other than Heald College. At the time I considered the Initial Review Population of Heald claims, ED had not made specific factual determinations of wrongdoing with regard to other schools.² Recently, however, the Department [announced findings](#) against Corinthian's Everest and WyoTech schools based in California and Everest online programs based in Florida as a result of a joint investigation with the office of the California Attorney General. The Everest and WyoTech findings include specific determinations of misstatements of placement rates in specified programs at specified Everest and WyoTech campuses (or online). The BD team and I have begun an in-depth review of these recent findings. I expect that they will allow the Department to provide borrower defense relief to additional students, similar to the way the ED Fine Letter issued to Heald has done. This topic will be addressed in future reports.

There are also claims from former students—both from Corinthian schools and other schools—whose loans are not covered by specific ED findings. This does not mean that material misstatements or other wrongdoing that trigger BD relief did not occur with regard to these claims; rather, it means that the BDP Team will have to review these claims to determine whether there is evidence supporting relief. We are hard at work with our colleagues in the Department to develop rules for deciding claims where no explicit findings have been made about the programs involved. This work will also inform our development of a general application form for borrower defense to be used in such cases.

Beyond this work reviewing claims, the BDP Team and I have consulted with the attorneys general of states where BD claims have been made to gain the benefit of any investigations they have made and their interpretations of applicable state law. The Everest and WyoTech findings made by the Department and the California Attorney General referred to above are one fine example of this work. The Department has also received investigative evidence regarding Corinthian from the Illinois Attorney General's office and, more recently, the Massachusetts Attorney General's office. We will analyze that evidence in the coming weeks. We continue to invite all state attorneys general to provide evidence of institutions' wrongdoing to me and the Department so that I can make determinations about the implications of the evidence on potential borrower defense claims.

In determining the availability of BD relief to additional student loan debtors that have submitted claims, my colleagues and I will especially look for evidence of patterns and practices that show

² The exception to this are the campuses operating under the Everest Institute-Cross Lanes, WV OPEID (01035600), with regard to which ED made findings, per its letter dated July 24, 2014. There are approximately 33 claims relating to this campus. They will be considered in light of ED's findings.

a concerted effort to mislead students or otherwise engage in conduct that violates applicable state law. One way of making these determinations is to determine whether the BD claims filed against a school show common patterns of misconduct with regard to a particular program, campus, or both.

Pursuing this mode of inquiry will allow the BDP Team its best opportunity to establish broad-based patterns of misconduct and to provide relief to a significant number of claimants more quickly. In this regard, it is important to note that the statements by claimants in their own words of how they were treated by the schools against which they have made a claim will be helpful to our resolution of claims. This will help increase understanding of what happened to students and whether state law was violated. In considering this evidence, however, the BDP Team will not expect or require certain words or phrases to trigger relief.

III. Closed School Claims

As discussed in my prior report, a significant number of former Corinthian students who were students at or around the time the colleges ceased operations have elected to seek a closed school discharge in lieu of making a borrower defense claim. As of November 18, 2015, FSA had approved 5,814 closed school discharge applications, resulting in \$75,461,790 of relief to borrowers. FSA continues to work through other closed school application claims at a steady clip, and anticipates that tens of millions of dollars or additional relief will be granted in the coming months.

Approved closed school applications from Corinthian students break down as follows:

School	Applications Received as of Nov. 18, 2015	Grants of relief Received as of Nov. 18, 2015	Loan Amounts
Heald	6,213	3,698	\$53,046,706
Everest	3,110	1,712	\$19,196,090
WyoTech	1,204	404	\$3,218,994
Total	10,527	5,814	\$75,461,790

IV. Conclusion

The Borrower Defense Program has made a good start at addressing BD claims, but much work remains to be done. To address remaining claims, we will make any aggregate findings that are justified by available evidence, and we will also analyze school conduct by campus and program. Input from the borrowers, state attorneys general, and other sources will be crucial in making determinations that are fair and supportable.

In this process, we will continue to engage with Congress, state attorneys general, and advocates for students to obtain the benefit of their insights and experience. As we gain further knowledge and experience, including through further engagement with stakeholders, the BDP Team and I will develop a general purpose application for borrower defense and make suggestions to the Under Secretary about a permanent infrastructure in the Department to address this issue. Each of these objectives is difficult, but a high-quality team is working on them. I look forward to reporting our progress in February 2016.

In the meantime, if any individual wishes to assert a defense to repayment of his or her federal student loan(s), please submit materials via email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

Information on what to include in your borrower defense submission is provided at: <https://studentaid.ed.gov/sa/about/announcements/corinthian> under the subheading “Background about Borrower Defense to Repayment.”

United States Department of Education
Third Report of the Special Master for Borrower Defense to the Under Secretary
March 25, 2016

This is my third report as Special Master to the United States Department of Education (the Department or ED) with regard to borrower defense to repayment (BD) issues. My first and second reports outlined the legal and regulatory bases for the granting of BD relief and the actual grants of relief made for BD and closed school claims through September 30, 2015.

This report shows continued progress on a number of BD goals. My colleagues and I have recently recommended to Under Secretary Ted Mitchell the granting of \$10,346,414 of additional relief with respect to 546 borrowers making BD claims related to Heald College, one of the subsidiaries of Corinthian Colleges, Inc. (CCI) and \$4,139,799 of relief with regard to 190 borrowers making claims related to two other CCI schools: Everest and WyoTech. Those recommendations were accepted by the Under Secretary and, pursuant to his order, the Department has begun the process of making the discharges. These actions bring BD relief to date to a total of \$42,318,574 relating to 2,048 borrowers. In addition, as of March 1, 2016, the Department has processed 6,838 closed school claims, many of whom were also eligible for BD relief, but chose to apply under the closed school discharge provision, comprising \$90,066,132 in loan relief. As described further herein, there is more work to be done. The Department is renewing efforts to reach borrowers who attended CCI schools who may be eligible for debt relief resulting from the Department's findings.

Since my last report, significant improvements have been made to the Department's infrastructure for dealing with BD claims. Robert Kaye, an experienced and respected enforcement lawyer, has been appointed to the newly created position of Chief Enforcement Officer, in which capacity he will head up the BD process, among other duties. Kaye will also spearhead the agency's efforts to enhance its investigative capabilities of institutions to enforce the Department's laws and regulations, as well as working with me to establish and implement processes for adjudicating related borrower defense claims. This action, which establishes full-time and permanent leadership for the program, has been further strengthened by the hiring of three additional lawyers to work on BD claims.

This report also discusses areas where work remains to be done, including 8,952 open BD claims that require additional work to resolve. The Borrower Defense Team and I are working diligently on these matters. I believe that we are proceeding in a way that will serve the interests of distressed borrowers and taxpayers and that will promote public trust and confidence in this process and in the federal student loan program.

My colleagues and I look forward to continuing our very important work on borrower defense, to continued engagement with stakeholders in the BD process, and to reporting to the public on our further progress.

Joseph A. Smith, Jr.
Special Master for Borrower Defense
U.S. Department of Education

I. Borrower Defense Claims

As discussed in prior reports, ED established the Borrower Defense process (BD) to provide a clearer path for borrowers to seek and obtain relief available under the law resulting from unlawful practices by institutional participants in its student loan programs. As of March 1, 2016, ED had received 11,000 Borrower Defense (BD) claims. The claims break down as follows:

School	Number	Percent of total
Heald (Corinthian) ¹	5,835	53.0%
Everest (Corinthian)	2,235	20.3%
WyoTech (Corinthian)	431	3.9%
The Art Institute (EDMC)	1,109	10.1%
ITT	344	3.1%
University of Phoenix	172	1.6%
DeVry	78	<1%
Kaplan	64	<1%
Westwood College	40	<1%
International Academy of Design & Technology	32	<1%
Other (no more than 20 claims from one school)	660	6.0%
Total	11,000	

My last report discussed in detail the granting of relief with respect to 1,312 BD claims, with aggregate balances of \$27,832,370 by former students of Heald College, one of the schools owned by Corinthian Colleges, Inc. (CCI). This report will discuss the granting of additional relief, aggregating \$14,486,204 to 736 former students of Heald and its CCI affiliates, Everest and WyoTech, for claims made through December 31, 2015.

II. ED Investigation of Everest and WyoTech Campuses

As described in my last report, ED's first Borrower Defense effort concerned loans to former students of Heald College (Heald), a subsidiary of Corinthian Colleges, Inc. (CCI). The

¹ The total number of claimants who attended CCI schools includes both borrowers who attended campuses and programs that are covered by the Department's findings about misleading placement rates during the relevant date ranges, as well as those who did not.

Department, in consultation with the Office of the California Attorney General, investigated and made findings regarding Heald that include specific determinations of misstatements of placement rates for specified programs at specified Heald campuses.

Following this work, the Department and the Office of the California Attorney General, continued investigating CCI campuses operating under the following names: Everest University, Everest College, and Everest Institute (collectively, “Everest”) and WyoTech. As a result of this investigation, on November 17, 2015, the Department and the California Attorney General released a letter (November 2015 Everest/WyoTech letter) reporting findings regarding 20 Everest and WyoTech campuses that include specific determinations of misstatements of placement rates for specified programs offered at Everest and WyoTech campuses located in California and for online programs. As more fully discussed below, BD relief has been authorized by Under Secretary Mitchell on the basis of the Everest/WyoTech findings and steps are being taken to facilitate the submission of additional BD claims by former Everest and WyoTech students in these programs.

The Department’s work investigating the rest of the Corinthian campuses continued after the California Everest and WyoTech findings were announced. More recently, as a result of its multi-year investigation, the Department made further findings regarding misrepresented job placement rates at an additional 71 Everest and WyoTech campuses, such that the Department’s findings now cover Everest and WyoTech campuses located in 23 states. The Department has made me aware of those findings, and the BD Team has prepared an attestation form for Everest and WyoTech students to facilitate BD claims that mirrors the Heald Attestation Form. The Everest and WyoTech programs that are covered by the Department’s additional findings with regard to misrepresented job placement rates and the Everest/WyoTech Attestation Form are available online at <https://studentaid.ed.gov/corinthian>. In addition to enhanced outreach to eligible former Heald students, the Department will soon conduct outreach to this group of students to inform them of their eligibility for BD relief.

III. Borrower Defense Claims Review and Approval

My prior reports have discussed that relief for BD claims under current ED regulations must be based on the showing of an act or omission by a school that would support a state law cause of action. To that end, the Department has worked with its law enforcement partners to gather evidence relevant to a determination of these claims.

As described above, ED’s first priority was to expedite relief of eligible loans to former students of Heald who were enrolled in programs that are covered by ED’s findings and relied on misleading placement rates. To further that process, the Department created and made available an attestation form for former Heald students to facilitate the filing of BD claims (Heald

Attestation Form) while accepting Heald claims from other sources as well. As a result of these efforts, relief with respect to 1,312 claims, having aggregate balances of \$27,832,370, was granted to claimants who submitted a claim on or before September 30, 2015.

A. CCI Claims

All of the BD relief granted for the period covered by this report relates to claims by former students of CCI schools. The details with regard to this relief are set forth below.

a. Heald Claims

In order to continue to expedite claims where relief could be granted on the basis of ED's findings, the BD Team first reviewed all pending claims as of December 31, 2015, with regard to Heald student loans where the initial advance had occurred after July 1, 2010 (the Heald Initial Review Population). As a result, it was determined that there were 844 claims in the Heald Initial Review Population, including (i) claims in hand at on September 30, 2015, as to which relief had not been granted and (ii) claims received after September 30, 2015.

The BD Team reviewed information from the Heald Attestation Forms and Departmental records to determine eligibility of loans in such population for BD relief. **From this review, 546 borrower claims, representing \$10,346,414 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (including restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and those discharges are in process.** The BD Team will continue reviewing and approving similar claims—including Heald claims received after December 31, 2015, on a rolling basis going forward.

An additional 298 Heald claims remain under consideration. I did not yet recommend relief for those claims because: (i) claimants were not enrolled in programs or time periods that were covered by the ED Fine Letter; or (ii) claimants did not have Federal Direct Loans (different rules govern BD relief in those cases).

b. Everest and WyoTech Claims

As of December 31, 2015, there were 2,114 BD claims from former students of Everest and WyoTech. As a result of the issuance by the Department of the November 2015 Everest/WyoTech letter, the BD Team has begun a review of claims relating to these schools comparable to the work that has been done (and is ongoing) with regard to Heald claims. Similar to Heald claims, these claims had been received through a number of channels in a variety of formats, including Everest and WyoTech borrowers who used the Department's Heald

Attestation Form to file their claims, forms from the “Debt Collective” website, and claims that were submitted in narrative form.

As it had done with Heald loans, the BD Team first reviewed all claims from all sources as of December 31, 2015 for Everest and WyoTech student loans issued to students who attended the California or online schools that were covered by the findings detailed in the November 2015 Everest/WyoTech letter, where the initial loan advance had occurred on or after July 1, 2010 – the earliest date covered by the Everest/WyoTech letter. There were 475 borrower claims that passed this screen (the Everest/WyoTech Initial Review Population). The BD Team then reviewed each of the claims in the Everest/WyoTech Initial Review Population to determine whether it met the elements for relief, namely whether the borrower was enrolled in a covered program or programs during the time period for which the Department found that Everest or WyoTech had misrepresented job placement rates and where the relevant misrepresentations was material. **From this review, 190 borrower claims, representing \$4,139,799 of loans, qualified for BD relief. I informed Under Secretary Mitchell of this determination and recommended that he authorize full relief (including restitution of all amounts paid) for such loans. The Under Secretary has authorized such relief and those discharges are in process.** The BD Team will continue reviewing and approving similar claims on a rolling basis.

As a result of the process just mentioned, 285 Everest and WyoTech claims remain under consideration. As is the case with the Heald claims discussed above, relief was not granted because (i) claimants were not enrolled in programs or time periods that were covered by the Everest/WyoTech letter; (ii) misstatements by the school were immaterial; or (iii) claimants did not have Federal Direct Loans.

B. Other Borrower Defense Claims

It should be noted that the CCI claims mentioned above as to which relief has not been granted have not been denied; rather, additional consideration of such claims will be required to determine whether and to what extent BD relief may be granted. In addition, BD claims have been received and are likely to be received from former students at schools other than the CCI schools.

These claims from former students—both from CCI schools and other schools—often relate to loans that are not covered by specific ED findings with regard to misstatement of placement rates. This does not mean that material misstatements or other wrongdoing that could be the basis for BD relief did not occur with regard to these claims; in fact, claims the BD Team has received often include allegations of misrepresentation, including false or misleading statements by school staff regarding employment prospects, the cost of attendance, amount of debt to be incurred, curriculum (including externships), career placement support, qualifications for job

licensure, and transferability of course credits. These claims will be reviewed. To address them, the BD Team and the Department's Office of General Counsel have done and are doing extensive research as to whether, under applicable federal and state law, (i) these allegations can provide bases for establishing school liability and (ii) the evidentiary support necessary to establish BD claims is present with regard to such allegations. In addition, based on what we have learned from reviewing many of these claims, the BD Team is developing a "universal" BD attestation form to facilitate claims from students around the country.

III. Closed School Claims

As discussed in my prior report, a significant number of former Corinthian students who were students at or around the time the colleges ceased operations have elected to seek a closed school discharge in lieu of making a borrower defense claim. As of March 1, 2016, FSA had received 11,470 applications for closed school relief and had approved 6,838 of these applications, resulting in \$90,066,132, of relief to borrowers. FSA continues to work through other closed school application claims at a steady clip, and anticipates that tens of millions of dollars or additional relief will be granted in the coming months.

Approved closed school applications from Corinthian students break down as follows:

School	Applications Received as of March 1, 2016	Grants of relief Received as of March 1, 2016	Loan Amounts
Heald	6,954	4,381	\$63,803,375
Everest	3,455	1,994	\$22,561,742
WyoTech	1,331	463	\$3,701,015
Total	11,740	6,838	\$90,066,132

IV. Outreach Activities

The Department has made numerous efforts to reach borrowers who may be eligible for loan discharges, by virtue of the Department's findings regarding misleading placement rates, in order to inform them of their options. Thus far, this outreach has consisted of multiple rounds of emails and postal mail to the over 54,000 Heald borrowers who had their first loan disbursement as early as January 1, 2010. The average open rate for these email campaigns is approximately 40%, which is higher than the average open rate for previous FSA email campaigns, as well as for government email campaigns generally. Nevertheless, the Department will continue its efforts to reach Heald borrowers. In order to improve the response rate, the Department has conducted email subject line testing, the results of which we anticipate will improve open rates in future email campaigns. The Department is also in the process of starting similar outreach campaigns for Everest and WyoTech borrowers who may have attended programs during time

periods that are covered by more recent Department findings that those schools published misleading placement rates based on the Department's lessons learned regarding how best to communicate with borrowers from prior outreach. In addition, the Department is exploring alternative methods of outreach—including, but not limited to, social media outreach and enhanced coordination with servicers—to reach potentially eligible borrowers that may not regularly check email and/or postal mail.

Further, the BD Team has received additional evidence from the Offices of the Attorneys General of Massachusetts, Illinois and Wisconsin regarding BD claims of former students of Everest in those states and with respect to other schools that are alleged to have engaged in similar misconduct. The team is working with these agencies to develop further findings and other bases for granting relief with respect to these matters, as appropriate.

V. Buildout of BD Infrastructure

Since my last report, the Department has made significant progress in the establishment of an infrastructure to address BD issues both now and in the future.

On February 8, 2016, Secretary John King announced the establishment of a Student Aid Enforcement Unit to respond more quickly and efficiently to allegations of illegal actions by higher education institutions. The Enforcement Unit will be led by Robert Kaye, one of the nation's top enforcement attorneys – most recently as a leader in the Federal Trade Commission's work protecting consumers. Through his work as the Bureau of Consumer Protection's Chief Litigation Counsel and as a manager in the Bureau's Division of Enforcement, Kaye has considerable experience supervising and advising managers and attorneys engaged in consumer protection investigations, as well as federal court and administrative litigation.

Kaye reports to Jim Runcie, the Chief Operating Officer of the [Office of Federal Student Aid \(FSA\)](#), under the oversight of the Under Secretary Ted Mitchell. The Chief Enforcement Officer is working closely with James Cole, Jr., General Counsel, Delegated the Duties of Deputy Secretary, to establish policies and practices for the Office. Borrower Defense will be one of four areas for which Rob Kaye and the Enforcement Unit will be responsible.

This important advance by the Department is augmented by the addition to the BD Team of three additional lawyers, all of whom began working at the Department this month.

VI. Conclusion

The Department has made significant progress in addressing the BD claims that it has received. It has granted significant additional relief to borrowers, through both BD and closed school

channels. More importantly, it has made significant investments in infrastructure to address claims of aggrieved students for years to come. I look forward to continuing to report on both aspects of this important work.

In the meantime, if any individual wishes to assert a defense to repayment of his or her federal student loan(s), please submit materials via email to FSASupport@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

Information regarding what to include in your borrower defense submission is provided at: [StudentAid.gov/borrower-defense](https://studentaid.gov/borrower-defense).

United States Department of Education
Fourth Report of the Special Master for Borrower Defense to the Under Secretary
June 29, 2016

This is my fourth and final report as Special Master to the United States Department of Education (the Department or ED) with regard to borrower defense (BD) issues. As disclosed in my last report, responsibility for Borrower Defense has now been transferred to the new Enforcement Office within Federal Student Aid. I am pleased to report that this transition has been accomplished effectively and professionally. The leadership of the Enforcement Office has informed me that it will continue to issue periodic reports on borrower defense issues.

This report will primarily address two important and complementary subjects: (i) the number and status of claims filed by former students at schools owned by Corinthian Colleges, Inc. (CCI); and (ii) the Department's continuing efforts to reach CCI students who may be eligible for borrower defense relief, including students with FFEL and Perkins loans.

With regard to CCI claims, this report shows a sharp increase in the number of claims filed, many of which followed the Department's March 25, 2016 announcement of job placement rate findings for Everest and WyoTech. From the beginning of my tenure in the fall of 2015 through June 24, 2016, the Department has approved 3,787 BD claims by former CCI students, with an aggregate loan amount of \$73,110,502. In addition, as of June 24, 2016, closed school loan relief has been granted to 7,386 CCI students, with an aggregate outstanding principal of \$97,613,625. Any remaining BD claims not yet adjudicated will be addressed by the Enforcement Office.

The Department has increased its outreach activities to make former CCI students aware of the availability of borrower defense relief. Section III of this report details several of the Department's recent outreach efforts.

I leave my engagement as Special Master with a profound sense of gratitude for the opportunity to have worked with the Department's extraordinarily talented and hardworking staff on a matter of critical importance to borrowers. In this work, we were fully supported by the Department's leadership. I am heartened by the appointment of talented professionals to continue this work in the newly created Enforcement Office and am confident that the Department's best work on borrower defense is yet to come. I look forward to following and supporting its progress as a citizen and taxpayer.

Joseph A. Smith, Jr.
Special Master for Borrower Defense
U.S. Department of Education

I. Borrower Defense Claims

As discussed in prior reports, ED established the Borrower Defense Program to enhance its ability to address claims by borrowers seeking relief from unlawful practices by institutional participants in its student loan programs. In this report, I use the term Borrower Defense Program (or BD Program) to refer to the Department's plans, systems, and processes designed to enable aggrieved borrowers to assert a defense to repayment of their federal student loans. As of June 24, 2016, ED had received 26,603 BD claims. The claims break down as follows:

School	Total Claims
Heald (Corinthian)	8,079
Everest (Corinthian)	12,925
WyoTech (Corinthian)	2,181
Other (schools with more than 10 claims)	2,641
Other (no more than 10 claims about one school)	777
Total	26,603

The chart above shows that claims from former students of schools owned and operated by CCI account for 87% of claims received to date.

A. CCI Claims Based on Department Findings

All of the BD relief granted during the period covered by this report (March 2, 2016 to June 24, 2016) relates to claims by former students of CCI schools. As discussed in prior reports, this relief has been based on: (i) the Department's analysis of the requirements of its BD regulations (including applicable state law); (ii) findings by the Department, in cooperation with state attorneys general, of misstatements of placement rate data relating to the particular programs attended by the borrowers seeking relief; and (iii) corresponding claims by former students. The chart below sets forth in detail the relief granted as of June 24, 2016, in terms of both number and aggregate principal amount of loans as to which relief has been granted.

School	Loans Approved for Discharge through 3/1/16	Loans Approved for Discharge from 3/2/16 through 6/24/16	Total Loans Approved for Discharge
Heald	1,812 \$37,767,392	1,366 \$25,770,136	3,178 \$63,537,528
Everest	196 \$4,091,658	310 \$4,180,652	506 \$8,272,310
WyoTech	40 \$488,769	63 \$811,895	103 \$1,300,664
Total	2,048 \$42,347,819	1,739 \$30,762,683	3,787 \$73,110,502

B. Other CCI Borrower Defense Claims

As stated in prior reports, borrowers who did not participate in a program covered by the Department's job placement rate findings may still be eligible for relief based on other allegations of misconduct. In this regard, the Department has received BD applications that include allegations of multiple misrepresentations to borrowers. These claims include important substantive issues. To address them, the BD Team has conducted extensive investigation into these claims, as well as research on whether these allegations constitute a claim under state law as required by the BD regulations now in effect. The BD Team will continue to investigate, research, and adjudicate these claims as part of the FSA Enforcement Office.

In the coming weeks, the Enforcement Office expects to begin ruling on BD claims based on allegations not covered by the Department's job placement findings. The Department will report on its progress on these claims in its next report.

C. Claims by State

BD claims have been received from borrowers around the country, with particular concentrations from borrowers in California and Florida. The chart below lists the twenty states with the most claims received as of June 24, 2016, based on the borrower's state of residence at the time the claim was submitted:

State	Claims Received	State	Claims Received
CA	9,697	PA	496
FL	2,040	VA	452
TX	1,338	OH	451
IL	1,074	NY	442
WA	1,023	CO	417
MA	1,006	NC	406
GA	957	IN	286
HI	726	NV	284
OR	659	MD	272
MI	655	AZ	262

D. Information for FFEL and Perkins Program Borrowers

The Department has received a number of inquiries seeking clarification regarding the treatment of borrower defense claims made by Federal Family Education Loan (FFEL) Program and Federal Perkins (Perkins) Program borrowers. FFEL and Perkins loans pose several distinct challenges in the borrower defense context. While FFEL loans (which have not been issued since 2010) included a borrower defense provision, the FFEL standard for borrower defense has additional requirements, such as requiring the borrower to prove a referral relationship against the school. Thus, the FFEL standard is harder to satisfy than the standards available to William D. Ford Federal Direct Loan (Direct Loan) borrowers. Furthermore, non-federal lenders initiated FFEL loans, and to the extent such lenders still hold these loans, borrowers would have to bring their borrower defense claims against these non-federal loan holders. Perkins loans simply do not have a borrower defense provision.

The Department seeks to put FFEL and Perkins borrowers on equal footing to the extent possible with federal Direct Loan borrowers. The Department has determined that FFEL and Perkins borrowers who submit borrower defense claims will be evaluated under the same standards as those available to Direct Loan borrowers if those borrowers consolidate their FFEL and/or Perkins loans into Direct Consolidation Loans. This equal treatment is possible because Direct Consolidation Loans are a type of Direct Loan that can be treated as such for borrower defense purposes. However, because the Department is limited by statute to discharging and refunding no more than the amount of the Direct Loan at issue, and because the Department will not have received funds previously repaid to a private loan holder, only discharge of the remaining balance on the consolidated loan will be available through this route. Any return of funds paid back on FFEL loans to private holders would have to be pursued with such holders directly. In addition, no return of amounts paid on Perkins loans will be available.

Prior to consolidation, the Department will provide FFEL and Perkins borrower defense claimants with the opportunity to obtain a pre-determination with respect to whether they are eligible for relief under the Direct Loan regulations. For FFEL and Perkins borrower defense claimants who are determined to be eligible, the Department will advise such borrowers to consolidate their loans to obtain relief and will inform them that relief cannot be granted until the loans are consolidated. For FFEL and Perkins borrowers who have already filed borrower defense claims, the Department is in the process of reviewing those claims, and no further action is required by those claimants at this time. The Department will continue to develop further guidance for FFEL and Perkins borrowers who wish to file borrower defense applications.

E. Federal Tax Implications

The United States Department of the Treasury (Treasury) has analyzed the federal income tax implications of BD relief for students who attended CCI schools and, as a result, has issued a revenue procedure concluding that such students do not need to include discharged amounts in their taxable income. This revenue procedure is available at <https://www.irs.gov/pub/irs-drop/rp-15-57.pdf>.

It should be emphasized that the revenue procedure mentioned above applies only to students who attended CCI schools. BD relief to borrowers whose loans relate to programs at other schools may have different and possibly adverse tax consequences. The Department urges potential recipients of such relief to consult competent tax advisors. The Department will communicate with Treasury regarding the number of BD claims relating to other schools and provide borrowers with information as appropriate.

III. The Department's Outreach Activities

The Department is making numerous efforts to reach borrowers who may be eligible for loan discharges under the CCI job placement rate findings, and continues to work to improve its outreach efforts. This outreach consists of multiple rounds of emails and postal mail to CCI borrowers who had their first loan disbursement as early as January 1, 2010. This includes email and postal mail to over 280,000 Everest and WyoTech borrowers and over 55,000 Heald borrowers. The average open rate for these email campaigns ranges between approximately 30% and 40% depending on the specific group of borrowers (for example, the open rate is lower for campaigns in which borrowers are receiving an email for the second time). These open rates are significantly higher than the average open rates for government and education industry email campaigns generally. Notably, the Department has refined these outreach efforts based on its experience with outreach to Heald borrowers. For example, the Department expanded its

outreach to include parent PLUS borrowers and enhanced the overall readability of the communications.

In addition, the Department is working closely with numerous state attorneys general who plan to contact borrowers in their states about BD through a variety of means, including telephone calls, postal mail, and/or email. The Department expects that a number of states will soon be actively participating in CCI Borrower Defense outreach. The Illinois and Maryland AGs' offices, among others, have been instrumental in helping to organize these outreach partnerships. The Department also will soon launch a Facebook ad pilot designed to test whether social media is an effective means of reaching borrowers – many of whom may not regularly check email and/or postal mail. In addition, the Department is exploring a comprehensive servicer outreach pilot to determine whether BD outreach might be improved when also conducted by servicers.

Finally, the Department has developed a “universal” BD application form to facilitate BD applications from all borrowers, regardless of their schools or alleged bases for BD relief. Once released, the form will standardize and simplify the BD application process for students who are not covered by specific ED findings. ED expects this form to become the primary means by which non-findings based BD claims are submitted going forward. The universal form has been published in the Federal Register at 81 Fed. Reg. 41530, and is pending required Paperwork Reduction Act clearance. The Department invites interested persons to submit comments on the form by August 26, 2016. To access and review the form and all related documents, please visit <http://www.regulations.gov> and search the Docket ID number ED–2016–ICCD–0075.

IV. CCI Closed School Claims

As discussed in my prior report, a significant number of former CCI students who were enrolled at or around the time the colleges ceased operations have elected to seek a closed school discharge. As of June 24, 2016, CCI borrowers have filed 12,254 applications for closed school relief. Of those, 7,386 were eligible for relief, resulting in \$97,613,625 of relief to borrowers, approximately 60 are still pending, and the remaining applications were not eligible under the closed school discharge requirements because, among other things, applicants graduated or withdrew prior to the June 20, 2014 deadline. FSA continues to work through closed school discharge applications and anticipates additional relief to be granted in the coming months.

Approved closed school applications from CCI students break down as follows:

School	Applications Received as of June 24, 2016	Applications Granted as of June 24, 2016	Loan Amounts
Heald	7,253	4,722	\$69,187,570
Everest	3,607	2,167	\$24,420,435
WyoTech	1,394	497	\$4,005,620
Total	12,254	7,386	\$97,613,625

V. The Department's Proposed Borrower Defense Regulations

To further protect borrowers and taxpayers, the Department recently announced new proposed borrower defense regulations. These regulations, which followed an extensive negotiated rulemaking process, would clarify, simplify, and strengthen the existing regulations that have governed borrower defense during my tenure as Special Master. The proposed regulations would create an improved process for borrowers who have been wronged, as well as create a process for group-wide loan discharges, which could be granted with or without applications from borrowers, when groups of students have been subject to misconduct. The proposed regulations also establish triggers that would require institutions to put up funds if events occur that indicate they are at financial risk. In addition, the proposed regulations would make it simpler for eligible students to receive closed-school discharges.

As set forth in my first report in September 2015, my paramount goal as Special Master was to help develop a fair, transparent, and efficient system for providing debt relief to deserving borrowers. I believe that the proposed regulations would go a long way toward making this goal a reality.

The proposed regulations were published in the Federal Register on June 16, 2016 and the public comment period ends August 1, 2016. The Department will publish final regulations by November 1, 2016.

VI. Conclusion

The BD program has made progress, but much remains to be done. To that end, the new Enforcement Office continues to grow, hiring additional attorneys and support staff to work on borrower defense, investigations, and related matters to accelerate progress on providing relief to defrauded borrowers. Under new and able leadership, and with additional resources, the BD Team expects, in the coming months, to begin adjudicating CCI claims that are not based on job placement rate findings, as well as claims by borrowers from schools other than CCI. Overall, by housing the BD program within the FSA Enforcement Office, the Department has made the program a permanent part of its broader effort to ensure greater accountability in Title IV lending.

As stated in previous reports, these efforts require close collaboration with a wide range of stakeholders, including state attorneys general, federal law enforcement agencies, advocates for students, members of Congress, and others. Interaction with these stakeholders has been critical to the BD program's progress, and I hope and trust that it will continue.

In closing, I will take the liberty of expressing a personal opinion. I have led a fortunate life because of education. The privileges I have enjoyed and do enjoy are due to the educational attainments of my parents and grandparents and the opportunities that they gave me to get an education. As a citizen and taxpayer, I can think of no better use of public funds than the opening of educational opportunity to all Americans.

Unfortunately, although the college investment still pays off for most students who graduate, any students that enroll in colleges that engage in the deceptive, fraudulent practices evidenced at CCI risk having their investment do more harm than good – leaving them with worthless degrees and substantial debt. This result not only harms the students affected, it harms our country as a whole. I am confident that the creation of the Enforcement Office and growth of the BD program—along with numerous other ED efforts, including gainful employment, increased accreditor accountability, and others—will go a long way toward ensuring that that the federal student loan program does what it was designed to do: help students build a better life for themselves, their families, and the nation.

If any individual wishes to assert a defense to repayment of his or her federal student loan(s), please submit materials via email to FSAOperations@ed.gov or by mail to: U.S. Department of Education, PO Box 194407, San Francisco, CA 94119.

Information regarding what to include in your borrower defense application is provided at: StudentAid.gov/borrower-defense.

ARCHIVED INFORMATION

U.S. Department of Education Accepts Operating Plan from Corinthian Colleges Inc.

Students Will Have Option to Complete Programs without Disruption

JULY 3, 2014

Contact: Press Office, (202) 401-1576, press@ed.gov (<mailto:press@ed.gov>)

The U.S. Department of Education and Corinthian Colleges Inc. have agreed to an operating plan that provides students at the company's career colleges a chance to complete their education and protects taxpayers' investment while Corinthian works to either sell or close its campuses across the country in the next six months. The plan calls for an independent monitor that will oversee this process for all programs owned by Corinthian, including Everest, Heald and Wyotech campuses. "We have accepted an operating plan for Corinthian Colleges Inc. that will protect students' futures and fulfill the Department's responsibilities to taxpayers moving forward," U.S. Education Under Secretary Ted Mitchell said. "Ensuring that Corinthian students are served well remains our first and most important priority, and we will continue to work with Corinthian officials and the independent monitor on behalf of the best interests of students and taxpayers." On June 12, the Department's Federal Student Aid (FSA) office placed Corinthian on an [increased level of financial oversight](http://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges) (<http://www.ed.gov/news/press-releases/us-department-education-heightens-oversight-corinthian-colleges>) after the company failed to provide records concerning enrollment and job placement data required by federal law, and failed to fully address concerns about its practices, including faulty job placement data used in marketing claims to prospective students and allegations of altered grades and attendance. In order to ensure that Corinthian can still provide classes for its current students, the Department has agreed to release \$35 million in student aid to be used solely for education activities - all of which must be approved by the Department. Under the operating agreement, which is effective July 8, 2014, Corinthian has also agreed to the following:

- Corinthian's campuses will inform students of their options, and every campus will institute a plan so students can complete their programs without disruption, if they choose to do so. The operating plan will also immediately halt enrollment at schools that are operating under this teach-out provision and require additional notification and disclosures for campuses that are being sold.
- Corinthian will only use federal student aid funds for normal daily operations, including student refunds, payroll expenses (including retention arrangements), accounts payable, interest and related fees, and related professional fees. Corinthian will not use federal funding to pay dividends, legal settlements of lawsuits or investigations, or debt repayments. Additionally, bonuses, severance payments, raises and retention agreements must be reported to the monitor and the Department at least two weeks prior to the creation of contractual obligations and are subject to the approval of the Department.
- Corinthian will hire an independent monitor - approved by the Department - that will have full and complete access to Corinthian personnel and budgets to ensure prudent financial management and see that taxpayer-funded federal student aid dollars are spent well. The monitor will also review teach-out plans and sales of schools, and ensure students have multiple ways to submit feedback and any complaints about the process.

Our mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Student Loans (<https://www2.ed.gov/fund/grants-college.html?src=ft>)

Repaying Loans (<https://studentaid.gov/manage-loans/repayment?src=ft>)

Defaulted Loans (<https://studentaid.gov/manage-loans/default?src=ft>)

Loan Forgiveness (<https://studentaid.gov/manage-loans/forgiveness-cancellation?src=ft>)

Loan Servicers (<https://studentaid.gov/manage-loans/repayment/servicers?src=ft>)

Grants & Programs (<https://www2.ed.gov/fund/grants-apply.html?src=ft>)

Apply for Pell Grants (<https://www.fafsa.ed.gov?src=ft>)

Grants Forecast (<https://www2.ed.gov/fund/grant/find/edlite-forecast.html?src=ft>)

Apply for a Grant (<https://www2.ed.gov/fund/grant/apply/grantapps/index.html?src=ft>)

Eligibility for Grants (<https://www2.ed.gov/programs/find/elig/index.html?src=ft>)

Laws & Guidance (<https://www2.ed.gov/policy/landing.jhtml?src=ft>)

Every Student Succeeds Act (ESSA) (<https://www.ed.gov/essa?src=ft>)

FERPA (<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=ft>)

Civil Rights (<https://www2.ed.gov/about/offices/list/ocr/know.html?src=ft>)

IDEA Website (<https://sites.ed.gov/idea/?src=ft>)

Data & Research (<https://www2.ed.gov/rschstat/landing.jhtml?src=ft>)

Education Statistics (<https://nces.ed.gov?src=ft>)

Postsecondary Education Data (<https://nces.ed.gov/ipeds/?src=ft>)

ED Data Express (<https://eddataexpress.ed.gov/?src=ft>)

Nation's Report Card (<https://nces.ed.gov/nationsreportcard/?src=ft>)

What Works Clearinghouse (<https://ies.ed.gov/ncee/wwc/?src=ft>)

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[Additional submission by Mr. Takano follows:]

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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 MARTIN CALVILLO MANRIQUEZ, *et al.*,

16
17 Plaintiffs,

18 v.

19
20 UNITED STATES DEPARTMENT OF
EDUCATION and BETSY DEVOS, in her
21 official capacity as Secretary of Education,

22 Defendants.
23
24
25
26
27
28

No. 3:17-cv-7210-SK

**DEFENDANTS' BRIEF IN RESPONSE TO
OCTOBER 8, 2019 ORDER**

1 On October 8, 2019, the Court entered an order permitting Defendants to submit a brief
 2 “on the issues of contempt and sanctions no later than October 15, 2019.” Order Lifting Stay,
 3 Setting Briefing Schedule, and Referring Case to Magistrate Judge for Settlement, ECF No. 118
 4 (“October 8 Order”). In particular, the Court requested that any such brief address (1) the legal
 5 authority justifying or limiting a finding of contempt or an order of sanctions; and (2) the types of
 6 remedy available and how each one would or would not further the goals of aiding the Plaintiffs
 7 and strongly deterring future violations of the Court’s orders. *Id.* at 1-2. Defendants respectfully
 8 submit the following brief in response to the Court’s October 8 Order.

9 INTRODUCTION

10 Defendants do not dispute that as of September 18, 2019, the day they filed their full report
 11 addressing compliance with the Court’s preliminary injunction, the U.S. Department of Education
 12 (“Department”) was not in substantial compliance with the Court’s orders. But as detailed in that
 13 report and at the October 7, 2019 case management conference (“October 7 Hearing”), and as
 14 further discussed below, the Department has been working diligently and in good faith to correct
 15 the errors that it has discovered and has made substantial progress toward bringing itself into full
 16 compliance with the Court’s preliminary injunction. The Department is dedicated to continuing
 17 that work moving forward, as well as to implementing better oversight and monitoring controls
 18 designed to prevent similar errors from occurring in the future. Given the complexity of
 19 administering a federal student loan portfolio encompassing some 45 million borrowers and the
 20 practical limitations on the Department’s ability to direct the actions of its loan servicers, the
 21 Department believes that it is currently taking all reasonable steps to comply with the Court’s
 22 injunction.

23 The Department appreciates, however, the gravity of its noncompliance and the significant
 24 impact such noncompliance has had on affected borrowers, and is committed to implementing
 25 further oversight and monitoring activities, as recommended by Plaintiffs and this Court, designed
 26 to achieve full compliance, remediate harm to affected borrowers, and deter future errors from
 27 occurring. In order to allow the Department to most efficiently direct its limited resources to
 28

1 ensuring full compliance with the Court's preliminary injunction, the Department respectfully
 2 requests that any sanctions be forward-looking, realistic in light of the practical difficulties
 3 involved, and designed to achieve the goal of compliance.

4 BACKGROUND

5 On August 19, 2019, the Court ordered Defendants to submit a full report detailing their
 6 compliance with the Court's preliminary injunction. ECF No. 110. Defendants submitted their
 7 report on September 18, 2019. ECF No. 111-2 ("Compliance Report"). In compiling the
 8 compliance report, the Department conducted a thorough review of the manner in which its loan
 9 servicers¹ have implemented the Department's instructions, consistent with this Court's
 10 preliminary injunction, to halt collection activity against Corinthian borrowers, including Plaintiff
 11 class members.² The report yielded disappointing results, with the Department learning that more
 12 than 16,000 individuals were subject to some form of collection activity during the pendency of
 13 the preliminary injunction. The Department understands that this is unacceptable and has been
 14 working diligently in the intervening period to remedy the effects of the noncompliance identified
 15 in its report. As discussed at the October 7 Hearing, the Department has made significant progress
 16 in doing so and, for the record, provides the following information regarding the Department's
 17 continued compliance efforts:

18 Borrowers who received incorrect notices that payments were due: The Compliance
 19 Report notes that 16,034 Corinthian borrowers received such notices and that, as of the

20 ¹ As explained in previous filings, the Department contracts with multiple loan servicers to perform
 21 the administrative tasks associated with "servicing" a federal loan, including collecting payments
 22 and implementing changes to the repayment status of individual borrowers. *E.g.*, ECF No. 104-1
 ¶¶ 7-13; Compliance Report at 8-11.

23 ² The Department collected information about all Corinthian borrowers who either received partial
 24 relief pursuant to the preliminarily enjoined "Average Earnings Rule" or who have a pending
 25 borrower defense claim. *See* Compliance Report at 2 n.2. This is due to the practical difficulty
 26 associated with identifying class members from this larger group, which requires scrutiny of each
 27 individual's borrower defense application to determine if it was asserted on the basis of the
 28 Department's job placement rate findings. Until it completes its review of each borrower defense
 application, the Department treats this over-inclusive set of Corinthian borrowers as subject to the
 Court's preliminary injunction. *Id.*

1 date of that report, the Department had corrected the repayment status of approximately
2 14,887 such borrowers. Compliance Report at 2-3. As of today, the Department has
3 completed the process of confirming with servicers that all 16,034 borrowers are either (a)
4 in forbearance and/or stopped collections status, or (b) not in such status due to a valid
5 exception, i.e., the borrower is either in a zero dollar payment, income-driven repayment
6 plan, is in deferment, or has elected to opt out of forbearance or stopped collections status.
7 See Compliance Report at 7-8.

8 Borrowers who made payments on their loan when they were not required to: The
9 Compliance Report states that 3,289 Corinthian borrowers made one or more payments
10 when they should have been in forbearance. Compliance Report at 2-3. The Department
11 now reports that it has requested that all such borrowers receive a refund of the money they
12 paid, and expects the process to be completed, and for all affected borrowers to receive
13 their refund checks, within 30-45 days.³ Borrowers will receive these checks on a rolling
14 basis.

15 Borrowers who were subject to involuntary collection efforts: The Compliance Report
16 notes that 1,808 Corinthian borrowers were subject to involuntary collection through
17 administrative wage garnishment and tax refund offset. Compliance Report at 3-4. The
18 Department now reports that it has requested refunds for all such borrowers, and that it has
19 requested that the process be completed by October 22, 2019. In addition, the Department
20 has sent a high level communication, from Secretary DeVos' Chief of Staff to a Deputy
21 Secretary at the U.S. Department of the Treasury ("Treasury"), requesting that Treasury
22 expedite these refunds with all due haste. The Department is currently working with
23 Treasury to determine whether refunds may be issued to borrowers without being offset
24 against other federal debts owed by the borrower, as would normally be required under the
25 administrative offset provisions of the Debt Collection Improvement Act of 1996. Affected
26 borrowers will receive their refund checks on a rolling basis.

27 Borrowers who were subject to adverse credit reporting: The Compliance Report states
28 that 847 non-defaulted class members were subject to adverse credit reporting as a result
of becoming delinquent on their payments. Compliance Report at 3-4. The Department
now reports that it has requested that the servicers correct this issue for all 847 borrowers,
and the servicers have completed the process for 718 borrowers.

The Department will continue to work diligently until it achieves full compliance with the
Court's injunction, but the Department believes that it is currently in substantial compliance as a

³ The Compliance Report also refers to 991 borrowers who made payments as a result of specific
errors made by one servicer, FedLoan Servicing. See Compliance Report at 3, 19-21. As explained
at the October 7 Hearing, the Department now wishes to clarify that these 991 borrowers are in
addition to the 3,289 borrowers otherwise identified as having made payments during the relevant
time period. The Department has requested refunds for these 991 borrowers as well, which are
currently being processed.

1 result of these efforts. The Department recognizes the need to conduct stronger oversight moving
 2 forward to ensure that the loans of all class members remain in the correct repayment status. To
 3 that end, as detailed in the Compliance Report, the Department will be implementing a new
 4 monthly compliance monitoring report; conducting an internal audit of its process for applying
 5 forbearance and stopped collections to borrower accounts that will result in recommendations for
 6 long-term solutions to ensure compliance; establishing a process to comprehensively track
 7 borrower communications; and conducting increased oversight of its servicers' activities. In
 8 addition, the Department is cognizant of the Court's desire to "aid[] the Plaintiffs and strongly
 9 deter[] future violations of the Court's orders," October 8 Order at 2, and is committed to
 10 implementing further mechanisms, as described below, to atone for its errors and ensure full
 11 compliance with the Court's preliminary injunction going forward.

12 ARGUMENT

13 **I. The Court's Contempt Authority**

14 "[C]ourts have inherent power to enforce compliance with their lawful orders through civil
 15 contempt." *Shillitani v. United States*, 384 U.S. 364, 370 (1966). Defendants believe that civil
 16 contempt would be the appropriate vehicle through which to address the Department's
 17 noncompliance with the Court's preliminary injunction. It is true that district courts also have the
 18 "power to punish disobedience to courts orders" through "criminal contempt," *United States v.*
 19 *Rose*, 806 F.2d 931, 933 (9th Cir. 1986), but a finding of criminal contempt "requires the
 20 procedural safeguards applicable in criminal proceedings, including proof beyond a reasonable
 21 doubt," *Kelly v. Wengler*, 822 F.3d 1085, 1097 (9th Cir. 2016); *see also* Fed R. Crim. P. 42 (setting
 22 forth procedural requirements for criminal contempt proceedings and generally requiring that a
 23 person be punished only "after prosecution on notice"). Thus, "knowledge or notice of the court
 24 order in question and a willful disobedience of that order are the essential elements of criminal
 25 contempt." *United States v. Rylander*, 714 F.2d 996, 1003 (9th Cir. 1983). "Willfulness in this
 26 context means a deliberate or intended violation, as distinguished from an accidental, inadvertent,
 27 or negligent violation of an order." *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770,
 28

1 782 (9th Cir. 1983); *see also Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992)
 2 (criminal contempt only appropriate where an actor “defies the public authority and willfully
 3 refuses his obedience” (citation omitted)). Defendants respectfully submit that the Department’s
 4 Compliance Report, undersigned counsel’s representations at the October 7 Hearing, and the
 5 further information contained in this brief establish that the compliance errors at issue here were
 6 not the result of any willful or intentional conduct on the part of the Department, but, as the Court
 7 has recognized, gross negligence, including negligent oversight of the Department’s servicers.⁴
 8 *See* Tr. of Oct. 7 Hearing at 6 (Court stating that Department’s conduct has amounted to “gross
 9 negligence,” but expressing “doubt that it’s an intentional flouting of my order”).

10 Civil contempt “consists of a party’s disobedience to a specific and definite court order by
 11 failure to take all reasonable steps within the party’s power to comply.” *Reno Air Racing Ass’n*,
 12 *Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006) (quoting *In re Dual-Deck Video Cassette*
 13 *Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). While a party’s behavior “need not
 14 be willful” to constitute civil contempt, there is no contempt when the party’s action “appears to
 15 be based on a good faith and reasonable interpretation of the court’s order.” *In re Dual-Deck*, 10
 16 F.3d at 695 (citations omitted). In addition, “[s]ubstantial compliance with a court order is a
 17 defense to an action for civil contempt.” *Balla v. Idaho State Bd. of Corrs.*, 869 F.2d 461, 466
 18 (9th Cir. 1989).

19 Upon a finding of civil contempt, a court may impose sanctions to “(1) compel or coerce
 20 obedience to a court order, and/or (2) compensate the contemnor’s adversary for injuries resulting
 21 from the contemnor’s noncompliance.” *Ahearn ex rel. NLRB v. Int’l Longshore & Warehouse*
 22 *Union*, 721 F.3d 1122, 1131 (9th Cir. 2013). Unlike in the context of criminal contempt, where
 23 the purpose of the sanction is “to punish past defiance and to vindicate the court’s judicial
 24 authority,” *Whittaker*, 953 F.2d at 517, a civil contempt sanction is generally “conditional and
 25 must be lifted if the contemnor obeys the order of the court,” *United States v. Powers*, 629 F.2d

26 ⁴ Although a district court retains the “inherent authority to impose sanctions for bad faith,” *Fink*
 27 *v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001), Defendants respectfully submit that such sanctions
 28 are not warranted here because, as explained above, bad faith has not been established.

1 619, 627 (9th Cir. 1980); *see also Falstaff Brewing*, 702 F.2d at 778 (“A contempt adjudication is
 2 plainly civil in nature when the sanction imposed is wholly remedial, serves only the purposes of
 3 the complainant, and is not intended as a deterrent to offenses against the public.”). “[W]here the
 4 elements of both civil and criminal are mixed, the sanctions are reviewed under the procedural
 5 requirements of criminal contempt.” *Whittaker*, 953 F.2d at 518.

6 In a civil contempt proceeding, the “moving party has the burden of showing by clear and
 7 convincing evidence that the contemnors violated a specific and definite order of the court. The
 8 burden then shifts to the contemnors to demonstrate why they were unable to comply.” *FTC v.*
 9 *Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (quoting *Stone v. City & Cty. of San*
 10 *Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)). “[G]ood faith, even where it does not bar civil
 11 contempt, may help to determine an appropriate sanction.” *Taggart v. Lorenzen*, 139 S. Ct. 1795,
 12 1802 (2019).

13 **II. Appropriate Sanctions in this Case**

14 As indicated above, Defendants take responsibility for and regret deeply the errors that
 15 have caused the Department to fail to comply with the Court’s preliminary injunction. Since the
 16 time it filed the Compliance Report, the Department has made significant progress towards
 17 achieving compliance with the Court’s orders, but acknowledges that further work is required and
 18 does not oppose the imposition of sanctions aimed at bringing the Department into full compliance
 19 and ensuring that the resulting harms to borrowers are appropriately remedied.

20 The Department believes, however, that any sanction imposed should be aimed at
 21 expeditiously achieving and maintaining full compliance with the Court’s injunction, without
 22 diverting unnecessarily the Department’s resources from these compliance efforts. *See* Tr. of Oct.
 23 7 Hearing at 6 (Court stating that it does not “want to divert more resources from the Department
 24 of Education to solving the problem” or “take away resources who would be helping the people
 25 who need to be helped”); *see also Falstaff Brewing*, 702 F.2d at 781 (“every precaution should be
 26 taken that [civil contempt] orders issue . . . only after legal grounds are shown and only when it
 27 appears that obedience is within the power of the party being coerced by the order” (quoting
 28

1 *Maggio v. Zeitz*, 333 U.S. 56, 59 (1948)); *Whittaker*, 953 F.2d at 517 (“Generally, the minimum
2 sanction necessary to obtain compliance is to be imposed.”). Defendants respectfully submit that
3 such forward-looking sanctions, as described below, will best aid Plaintiff class members affected
4 by the Department’s noncompliance.

5 The Court has “wide discretion to fashion an equitable remedy for contempt that is
6 appropriate to the circumstances.” *Tatung Co., Ltd. v. Hsu*, No. 13-cv-1743-DOC (ANx), 2016
7 WL 1047343, at *5 (C.D. Cal. Mar. 16, 2016) (quoting *EEOC v. Guardian Pools, Inc.*, 828 F.2d
8 1507, 1515 (11th Cir. 1987)). Defendants believe the following remedial measures are appropriate
9 to remedy the harm suffered by Plaintiff class members and to enforce compliance with the
10 preliminary injunction:

11 Compliance reporting: In its October 8 Order, the Court stated that it would “devise a
12 system under which Defendants will be required to report the status of their compliance with the
13 injunction.” October 8 Order at 2. As noted at the October 7 Hearing, Defendants are prepared to
14 report to the Court the status of the Department’s compliance on a monthly basis⁵ until further
15 Order from the Court. Defendants can agree to provide high-level reports (devoid of personally
16 identifying information to protect borrowers’ privacy interests) that detail, with respect to
17 individuals the Department deems subject to the Court’s preliminary injunction, *see supra* p. 3 n.2,
18 (1) repayment status; (2) how many covered borrowers entered or exited forbearance or stopped
19 collections status during the reporting period; (3) whether any covered borrower who is not in
20 forbearance or stopped collections status is in that status because of a valid exception; (4) the status
21 of refunds for all covered individuals who were erroneously requested to make payments on their
22 loans as a result of the Department’s noncompliance; (5) the status of refunds for all covered
23

24 ⁵ The Court noted at the hearing that it would require the Department to file a “monthly report”
25 regarding its compliance. Tr. of Oct. 7 Hearing at 11. Defendants agree that this is an appropriate
26 time interval to allow the Department to report on its progress without unnecessarily diverting
27 resources from its other compliance efforts. In order to allow the Department adequate time to get
28 its monthly compliance monitoring program up to speed, analyze the results, and provide accurate,
up-to-date information, *see* Compliance Report at 4-5, 27-28, Defendants respectfully request that
the Department be permitted to submit its first monthly report by no later than November 22, 2019.

1 individuals who were erroneously subject to wage garnishment and administrative offset as a result
 2 of the Department's noncompliance; (6) the status of credit reporting corrections for all covered
 3 individuals who were subject to adverse credit reporting as a result of the Department's
 4 noncompliance; (7) the status of individualized notifications to all borrowers affected by the
 5 Department's noncompliance in the manner set forth in (4)-(6) above; (8) the status of
 6 individualized notifications to all covered borrowers regarding the Department's noncompliance;
 7 and (9) the overall status of the Department's progress in achieving and maintaining compliance
 8 with the preliminary injunction.

9 Notifying covered borrowers of noncompliance: The Court also stated in its October 8
 10 Order that it would "devise a system under which Defendants will be required to report . . . the
 11 method in which Defendants notify plaintiffs in the class." October 8 Order at 2. The Department
 12 understands that the Court is dissatisfied with the manner in which the Department has conducted,
 13 and proposed to conduct, outreach to covered borrowers. The Department has consulted with an
 14 integrated communications working group to enhance existing borrower communications and
 15 develop new communications related to this litigation. Communications include emails and web
 16 content, and the Department is currently working to update these outreach mechanisms to make
 17 them simpler, clearer, and, in the case of the Department's website, more prominent and easier to
 18 find. Starting with a meet and confer on October 10, 2019, Defendants have engaged counsel for
 19 the Plaintiffs in this process and anticipate further communications with counsel to assist in
 20 creating effective borrower communications. Once the language is finalized, the Department can,
 21 if the Court deems it appropriate, submit its proposed outreach communications to the Court for
 22 further review.

23 In addition, the Department is updating its currently-existing borrower defense hotline to
 24 add a new menu item specifically devoted to the *Manriquez* injunction and issues associated with
 25 the Department's noncompliance. The Department will make borrowers aware of this new hotline
 26 through a variety of communications to borrowers potentially affected by the compliance issues.
 27
 28

1 Quality Assurance Review: As discussed in the Compliance Report, the Department has
 2 commissioned a “quality assurance review” (“QAR”) of the Department’s procedures for applying
 3 forbearance and stopped collections status to borrower defense claimants. This internal audit will
 4 “review current processes and procedures and make recommendations for longer-term solutions
 5 for ensuring compliance with the preliminary injunction and any additional borrower defense-
 6 related repayment status policies with requisite controls and reporting.” Compliance Report at 5.
 7 The Department is willing to engage and solicit the views of counsel for the Plaintiffs as part of
 8 this process. Because this is an internal review of the processes and procedures of the Department
 9 and its contractors, the Department does not believe that formal participation by outside actors,
 10 such as Plaintiffs’ counsel, is consistent with the Department’s quality assurance review and
 11 internal audit guidance. *See generally* ECF No. 111-10. Subject to any appropriate redactions as
 12 needed to protect confidential or privileged information, the Department is willing to file the
 13 completed QAR report with the Court.

14 Given that the QAR process is already in progress, the Department does not believe that a
 15 special master is necessary. *See* Tr. of Oct. 7 Hearing at 5 (Court considering whether a “special
 16 master” is needed to “oversee” the process of ensuring that potential class members “are actually
 17 getting the relief they need in a timely manner”). Although the staff performing the QAR are
 18 Department employees, they are independent of the business units that they are auditing (i.e., the
 19 entities that are responsible for the implementation of the Department’s efforts to comply with the
 20 preliminary injunction). The QAR staff report directly to Department leadership and as a result
 21 are able to retain objectivity and independence in conducting their review and reporting the results
 22 of that review. The Department respectfully submits that oversight and review by a special master
 23 would be unnecessarily duplicative of the QAR process.

24 Increased oversight of servicers: The Department is committed to increasing its oversight
 25 of servicers, including exploring all available contractual remedies for the errors that have occurred
 26 to date. These remedies include equitable adjustments to contract payments (i.e., decreasing
 27 payments to servicers for improper servicing under the Department’s contracts); reallocation of

1 borrowers' accounts to other servicers; adverse performance reporting via the Contract
 2 Performance Assessment System, a federal government-wide system that allows all government
 3 entities to see an agency's review of a contractor's performance, which in many cases may affect
 4 the contractor's future business opportunities with the federal government; and the ability to
 5 demand corrective action plans to address how the servicer may improve performance and reduce
 6 the risk that the issues that have occurred to date will reoccur. The Department has also created a
 7 new team, dedicated to servicer oversight and management, to monitor servicers' compliance with
 8 any directions from the Department pursuant to the Court's orders. Subject to any appropriate
 9 redactions as needed to protect confidential or privileged information, the Department is willing
 10 to file the responses its servicers provide to any "letters of concern" with the Court. *See* ECF No.
 11 115 at 6. As the Department continues to explore these options, it proposes reporting to the Court
 12 any steps it has taken with respect to its servicers in its first monthly compliance report.

13 In addition, the Court inquired at the October 7 Hearing about its ability to bring the
 14 Department's servicers under its jurisdiction. The Department believes that, pursuant to Federal
 15 Rule of Civil Procedure 65, the servicers are, as agents of the Department, subject to this Court's
 16 injunction. Fed. R. Civ. P. 65(d) (injunctions are, so long as notice is provided, binding on a
 17 party's "officers, agents, servants, employees, and attorneys," as well as "other persons who are in
 18 active concert or participations" with such officers, agents, servants, employees, and attorneys).
 19 This is true regardless of whether the servicers were "parties to the original proceeding." *See, e.g.,*
 20 *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). If the Court deems it appropriate, however,
 21 it has the authority to modify its preliminary injunction order to name specifically the
 22 Department's servicers. *See Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv.,*
 23 *LLC.*, 985 F. Supp. 2d 23, 30 (D.D.C. 2013) (finding that "if an injunction already binds a non-
 24 party by operation of Rule 65(d)(2), a court may clarify the injunction to make explicit what is

1 already implicitly so,” and clarifying its order to “make explicit” that third-party agent was
 2 bound).⁶ Defendants do not oppose such a modification here.

3 Defendants respectfully submit that this package of remedial measures is sufficient to
 4 coerce the Department from substantial to full compliance with the Court’s injunction, to remedy
 5 the harm suffered by covered borrowers, and to prevent future lapses. Further compensatory
 6 sanctions, such as fines and the payment of attorneys’ fees, would merely “divert more” of the
 7 Department’s resources away from “solving the problem.” Tr. of Oct. 7 Hearing at 6; *see also*
 8 *McKeon v. Cent. Valley Cmty. Sports Found.*, No. 1:18-cv-00358-BAM, 2019 WL 1208986, at *2
 9 (E.D. Cal. Mar. 14, 2019) (“In imposing civil contempt sanctions, the court must impose the most
 10 minimal sanction necessary to coerce the contemnor to comply with the order.”). In particular,
 11 Plaintiffs’ request that the Court require Defendants to pay fines until they demonstrate that they
 12 “have refunded all illegally seized money and are in full compliance with the Court order,” should
 13 be denied. ECF No. 115 at 6. As explained above and at the October 7 Hearing, *see* Tr. of Oct. 7
 14 Hearing at 7-11, the Department has already done in its part in requesting such refunds, which
 15 must now be processed by its servicers and, ultimately, Treasury. While the Department has
 16 communicated with Treasury in an attempt to expedite this process, it lacks the ability to control
 17 how quickly Treasury will complete the refunds. Thus, the type of coercive fine Plaintiffs propose
 18 would not hasten the processing of refund payments.⁷ *See United States v. Ayres*, 166 F.3d 991,
 19
 20

21 ⁶ This is true notwithstanding the pending appeal of the Court’s preliminary injunction orders.
 22 *Wash. Metro. Area Transit Comm’n*, 985 F. Supp. 2d at 29-30.

23 ⁷ In the parties’ most recent Joint Case Management Statement, Plaintiffs stated that they had
 24 requested that the Department “discharge the loans for the 1,808 Students subject to unlawful
 25 involuntary collections” as a show of “good faith.” ECF No. 115 at 6 n.8. Defendants do not
 26 believe that such action is an appropriate civil contempt sanction. The Court’s preliminary
 27 injunction does not require the Department to discharge any loan debts (which is the ultimate relief
 28 Plaintiffs seek in this lawsuit), so an order requiring the Department to take such action would not
 further compliance with the Court’s injunction. Nor would it compensate borrowers for any losses
 resulting from the Department’s noncompliance, which are limited to amounts improperly
 collected and which the Department is already in the process of refunding.

1 997 (9th Cir. 1999) (“Civil contempt sanctions . . . are only appropriate where the contemnor is
2 able to purge the contempt by his own affirmative act . . .”).

3 Defendants also believe that the sanctions described above would further the Court’s
4 interest in “strongly deterring future violations of the Court’s orders.” October 8 Order at 2. As
5 the Ninth Circuit has recognized, “[v]irtually every punishment has a concomitant deterrent
6 purpose.” *Bingman v. Ward*, 100 F.3d 653, 656 (9th Cir. 1996). Here, remedial measures that
7 require the Department to, among other things, report on a regular basis the status of its compliance
8 with the Court’s preliminary injunction and put affected borrowers directly into contact with
9 Plaintiffs’ counsel, coupled with the continued threat of further sanctions for future
10 noncompliance, serve a strong deterrence value in preventing future violations.

11 In light of all of these considerations, Defendants respectfully submit that any sanctions
12 order that the Court ultimately imposes should allow the Department to continue the progress it is
13 making toward achieving full compliance by dedicating increased resources to that effort.

14 Dated: October 15, 2019

Respectfully submitted,

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[Additional submission by Mr. Thompson follows:]

12/18/2019

Bid to buy for-profit college by former Obama insiders raises questions - POLITICO

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EDUCATION

Bid to buy for-profit college by former Obama insiders raises questions

'There is at least a taste of unseemliness involved in this,' a former top education official said.

By MICHAEL STRATFORD and KIMBERLY HEFLING | 06/29/2016 05:23 AM EDT



Longtime Obama friend Marty Nesbitt's private equity firm Vistria Group has mounted a charm offensive on Capitol Hill to talk up the proposed sale of the for-profit University of Phoenix. | Getty

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As the Obama administration cracks down on for-profit colleges, three former officials working on behalf of an investment firm run by President Barack Obama's best friend have staged a behind-the-scenes campaign to get the Education Department to green-light a purchase of the biggest for-profit of them all — the University of Phoenix.

The investors include a private equity firm founded and run by longtime Obama friend Marty Nesbitt and former Deputy Education Secretary Tony Miller. The firm, Chicago-based Vistria Group, has mounted a charm offensive on Capitol Hill to talk up the proposed sale of the troubled for-profit education giant, which receives more than \$2 billion a year in taxpayer money but is under investigation by three state attorneys general and the FTC.

What stands out about the proposed deal is that several key players are either close to top administration officials, including the president himself, or are former administration insiders — especially Miller, who was part of the effort to more tightly regulate for-profit colleges at the very agency now charged with approving the ownership change. For-profit college officials have likened those rules to a war on the industry, and blame the administration for contributing to their declining enrollments and share prices.

The proposed sale carries high stakes for taxpayers, students and investors: The University of Phoenix's financial stability may depend on the \$1.1 billion acquisition. If the company were to fail, more than 160,000 students could be displaced and the government would be on the hook for hundreds of millions in student loans.

But the investors' effort to seek Education Department approval of the school's ownership change also raises questions about potential conflicts of interest.

"There is at least a taste of unseemliness involved in this," said Mark Schneider, a former top education official under President George W. Bush. "They regulate it. They drive the

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12/18/2019

Bid to buy for-profit college by former Obama insiders raises questions - POLITICO

By MICHAEL STRATFORD

Vistria Group said it isn't seeking special treatment. "We expect the Department to evaluate this proposed transaction on the merits," the company said in a statement.

Vistria is part of a consortium of investors involved in the proposed acquisition, which has already won over shareholders of the school's parent company, Apollo Education Group. But now the investors need the Education Department and the school's accreditors to sign off on the ownership change to keep the federal money flowing — most of it in the form of student loans and Pell Grants.

With those decisions looming, Miller and at least one other former Obama insider have met with staff to Sens. Elizabeth Warren (D-Mass.), Richard Blumenthal (D-Conn.) and Dick Durbin (D-Ill.), looking to reassure some of the loudest critics of for-profit colleges in the president's own party, several Senate aides confirmed to POLITICO. Those lawmakers have pushed Obama's Education Department to be even tougher on for-profit colleges.

Miller has also met with staff members working for other committee members, including Sens. Michael Bennet (D-Colo.), and Bob Casey (D-Pa.), as well as with Sen. Lamar Alexander, the Tennessee Republican who chairs the Senate education committee. Nesbitt was not part of those Capitol Hill meetings, according to the aides.

The investors' pitch is that they will turn around the beleaguered education company and boost student outcomes. In announcing the sale, Miller said in a statement that the investors are committed to running the University of Phoenix "in a manner consistent with the highest ethical standards."

But the specter of former insiders pushing the sale of a company in an industry that has long been in the administration's crosshairs is not lost on critics. For seven years, the Obama administration has waged a crackdown on poor quality and predatory practices at many for-profit colleges, with the president himself excoriating some schools for "making out like a bandit" with federal money, but saddling students with big debts and leaving them unprepared for good jobs. He did not name the schools.

"It's ironic that a former senior official at the Department of Education — an agency that has intentionally targeted and sought to dismantle the for-profit college industry — would

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“Mr. Miller will soon learn firsthand how the harmful regulations he helped develop will limit the choices of students and create burdensome red tape for his institution,” she added.

Sen. John McCain (R-Ariz.) — a longtime defender of the University of Phoenix — told POLITICO he blames the administration’s hard-charging regulatory approach for helping to drive down the company’s stock price and contributing to its decision to sell.

“I know it was the attacks that drove the stock price down,” McCain said. “It’s very clear.”

The sale price, which shareholders approved last month after initially balking at a lower price, is considered a bargain by some industry observers. The day Obama was sworn into office on Jan. 20, 2009, the company’s stock closed at \$86.54 per share. Today, it’s trading at around \$9, although a recovering economy, unfavorable media coverage and the for-profit industry’s general slump have also contributed to that drop.

Some Senate Democrats said they are also uneasy with the investors’ plan to take the university private, which means it would no longer have to publicly disclose information such as executive compensation, lawsuits or when it’s a target of investigations. Those details are useful to prospective students, they say, at a time when the school faces inquiries from both state and federal authorities.

“Essentially, a company that receives more than \$2 billion annually from federal taxpayers — nearly 80 percent of its revenue — is going dark, and it’s happening at a time when the University of Phoenix has come under increased scrutiny from state and federal regulators,” Durbin wrote in a March letter to the Education Department.

Sen. Sherrod Brown (D-Ohio) said the university’s “questionable track record is already a point of concern, and there are many questions as to whether the sale of its parent company is in the best interests of both students and taxpayers.”

Who’s who

Several players in the deal have close ties to the Obama administration they’re now attempting to influence.

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Miller, who spent more than four years as a top Education Department official, represented the administration during nearly a dozen meetings with for-profit education companies — including the very company his firm is now seeking to buy, department records show. The meetings centered on controversial “gainful employment” proposals to cut off financial aid from programs where students leave with high debt and poor job prospects.

Other players in the Capitol Hill effort include Jonathan Samuels, who was responsible for pushing Obama’s agenda through Congress during his nearly six years working in legislative affairs at the White House. Samuels, who now works for Vistria Group, has joined Miller in at least some of his meetings on the Hill, according to a Senate aide. Vistria has also enlisted former White House Deputy Communications Director Amy Brundage, who is working at the Washington public affairs firm SKDKnickerbocker.

“The irony is not lost on us,” said one Republican congressional aide, who asked for anonymity to speak freely. “It’s quite rich, when you have former Obama administration officials who used to denigrate for-profit education now profiting off it.”

Nesbitt, meanwhile, is a co-founder and co-CEO of Vistria Group and widely considered the president’s closest friend. He is Obama’s frequent golf and basketball partner, while his wife, Anita Blanchard, is an obstetrician who delivered Malia and Sasha Obama. Nesbitt acted as treasurer for both of the president’s campaigns and heads the Obama Foundation, which is planning his presidential library.

Nesbitt is also a former business associate of Commerce Secretary Penny Pritzker; he set up Vistria Group in 2013, more than a year after the sale of The Parking Spot, an airport parking company he started with Pritzker’s backing. One of Vistria’s investors has been a charitable foundation called The Pritzker Traubert Foundation, started by Pritzker, federal tax records show. Pritzker resigned from her position at the foundation when she became a cabinet member in 2013. A Commerce Department official said she has not been involved with discussions about the University of Phoenix sale.

Nesbitt, Miller, Samuels and Brundage all declined to comment to POLITICO about the nature of Vistria’s meetings with lawmakers or whether they had reached out to Education Department officials to discuss the potential sale. At the request of the company’s public relations firm, reporters submitted written questions about the meetings, allegations of

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12/18/2019

Bid to buy for-profit college by former Obama insiders raises questions - POLITICO

"We believe that the University of Phoenix, with our support, is poised to be a leader serving the adult learner, by graduating students with the knowledge and skills that employers value, at a cost to the student that ensures a compelling return on her or his educational investment," the statement said.

"We believe that high-quality outcomes, whether from nonprofit or for-profit institutions, is what is needed in the sector and what matters most. We expect the Department to evaluate this proposed transaction on the merits. The parties have engaged in the formal acquisition review process through regular order."

The Education Department also declined to answer POLITICO's questions about whether Nesbitt, Miller or Samuels had discussed the proposed sale with department officials. It refused to provide a copy of the paperwork the investors submitted to kick off the regulatory approval process.

Vistria is one of three investment groups involved in the deal — the others are Wall Street giant Apollo Global Management (no connection to Apollo Education) and Najafi Companies. A spokeswoman for a firm representing Apollo Education declined to say how much each investor had agreed to contribute. But in addition to capital, Vistria brings Obama administration connections that could help pave the way for a smooth approval process and working relationship with government regulators afterward.

Obama's missed chance to help for-profit college students

By ANN LARSON

It's quite common for for-profit education companies to hire people who were former regulators, accreditors, politicians or established higher education officials, said Kevin Kinser, an education professor at the State University of New York at Albany who has studied for-profit colleges.

Kinser said it gives the schools a "sense of legitimacy" and understanding of how systems work "for them to do what they need to do."

Durbin, a reliable Obama ally in the Senate, said he's not close enough to Nesbitt to know why he got involved with the acquisition.

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The holding company set up by the investors to buy the University of Phoenix has also paid \$80,000 to lobbyists. The lobbying team includes Marc Lampkin — a longtime counsel to former House Speaker John Boehner — at the high-powered D.C. firm Brownstein Hyatt Farber Schreck.

Trace Urdan, a for-profit college analyst who heard Miller describe Vistria's plans at a recent conference, said Miller appeared "quite earnest." Miller emphasized that the prospective owners plan to use data to monitor student performance and to make improvements, Urdan said.

"He thinks the size of the university is a real strength to be exploited and the implication is there is a lot of data, so you can analyze the data and figure out what works and doesn't work," Urdan said.

The potential sale offers a potential lifeline for the university. But there's pressure to get the government's approval quickly since the parent company has warned in regulatory filings that if the sale isn't completed by October, its worsening financials might sink the deal. Either way, the company says that a further decline in its stock price could lead to regulatory problems that "severely stress" its liquidity.

If the company were to fail, either before or after the proposed sale, current students would be entitled to have their loans forgiven. Taxpayers have already spent more than \$90 million on student loan forgiveness resulting from last year's collapse of the Corinthian Colleges chain.

The Phoenix juggernaut

Founded in 1976, with a class of just eight students, the University of Phoenix became a pioneer in the burgeoning field of career education for adults — providing flexibility for busy working adults looking for vocational education, especially after the advent of online programs in the late 1980s.

But as the school grew larger, hitting more than half a million students in 2010, critics say it lost its way in terms of the quality of its programs, high costs and aggressive recruiting tactics.

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The university currently faces investigation by the attorneys general of California, Massachusetts and Florida, according to regulatory filings. Its parent company disclosed last year that the FTC had requested information on a “broad spectrum” of its business practices, including “marketing, recruiting, enrollment, financial aid, tuition and fees, academic programs, academic advising, student retention, billing and debt collection, complaints, accreditation, training, military recruitment, and other compliance matters.”

Early in the Obama administration, in 2009, the Justice Department announced the University of Phoenix had agreed to pay \$78.5 million to settle allegations the school had been fraudulently collecting taxpayer money. Two former recruiters had alleged the school created fake employee personnel files to hide the fact it was illegally giving recruiters gifts and free trips based on the number of students they brought in. The university did not acknowledge any wrongdoing in the settlement.

Last fall, the Pentagon took the unusual step of temporarily prohibiting the University of Phoenix from recruiting on military bases. The alleged violations included the misuse of military seals and trademarks, and conducting activities on military bases without proper permission. The ban was reversed three months later.

Many of the university’s students struggle with debt: Data released by the Obama administration’s College Scorecard last year shows that a majority of students who took out federal loans to attend the University of Phoenix did not end up making even a dollar’s worth of progress in paying down their debt after five years — a sign their debts may not be manageable.

Yet the school continues to be popular, especially with veterans. Last year, about 45,000 GI Bill recipients enrolled at the University of Phoenix, at a cost of \$290 million to taxpayers.

The university’s parent company is also seeing big international growth: Its global division serves more than 150,000 learners worldwide, with online and campus-based programs in countries such as Australia, India, Mexico and Chile, according to a company filing. While the international schools are a small share of total revenue, the footprint of its global division has been expanding.

‘Black box’ approval process

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Bob Shireman, a former Obama Education Department official who was one of the architects of the for-profit college crackdown, called the approval process for college ownership changes a “black box.”

While the White House keeps logs to document who comes and goes to speak to executive branch officials, no one knows who is lobbying the Education Department on the sale, said Ben Miller, a former Obama Education Department staffer who is now senior director for postsecondary education at the Center for American Progress.

Asked about its decision-making process, a department official said the approval of the ownership change will be handled by the Office of Federal Student Aid, the department’s business operations arm, “in consultation with a variety of other offices,” which they declined to name.

“As we have said in the past, what’s good for students is at the heart of our review of this sale,” Dorie Nolt, the department’s press secretary, said in a statement. “We will work with Apollo to ensure that the new owner is focused on improving student outcomes.”

Shireman and Ben Miller say they want the department to use its leverage to impose conditions on the approval of the ownership change, such as requiring the university to rely less heavily on federal Pell Grants and other taxpayer programs, and to seek out more students who are willing or able to pay out of pocket.

Even if those conditions happen, Durbin said he’s skeptical the investors can pull off a turnaround, which he said previous owners failed to accomplish.

“I have met with the Apollo [Education Group] people over the years,” Durbin said. “Every meeting was preceded by ‘we’re different,’ and then it would turn out ... they weren’t so different.”

Miller insists this ownership team will turn things around. In a letter to The Wall Street Journal in February, he said his company is committed to making the University of Phoenix “the most trusted provider of career-relevant higher education for working adults in the country.”

The new owners will prevail on the merits, he said.


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[Additional submission by Ms. Wild follows:]

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ARCHIVED INFORMATION

Education Department Appoints Special Master to Inform Debt Relief Process

Special Master will advise on borrower defense issues and creating a debt relief process that is efficient, transparent, and fair for students and taxpayers.

JUNE 25, 2015

Contact: Press Office, (202) 401-1576, press@ed.gov (<mailto:press@ed.gov>)

As a next step to provide students who attended Corinthian Colleges the debt relief they are entitled to, Under Secretary Ted Mitchell announced today that he has appointed Joseph A. Smith, a distinguished advocate for consumers and taxpayers, as a Special Master to guide a fair, efficient process.

In addition to advising the Department on issues related to Corinthian, Smith will help develop a broader system to aid students at other institutions who are seeking debt relief of their federal Direct Loans because they believe they were defrauded.

"The Department's aim is to make the process of forgiving loans efficient, transparent, and fair—and to ensure students receive every penny of relief they are entitled to under law," said U.S. Education Under Secretary Ted Mitchell. "This is uncharted territory for the Department, and we are glad that Mr. Smith will be helping us. He brings tremendous experience to this process, and is committed to working on behalf of students. He will be critical to helping us develop a broader system that will support students at other institutions who believe they have a defense to repayment."


Although Smith will not have the ultimate decision-making authority in granting debt relief to Corinthian students he will report to the Under Secretary and advise on the following areas:

- Creating a simple application for debt relief for all borrowers applying for loan forgiveness.
- Making recommendations on issues of law and fact related to borrower defense claims received by the Department.
- Strengthening the process by which the Department can recover money from schools after successful borrower defense claims.

Smith will regularly communicate about the process with students, stakeholders, and the public at large, as he and the Department work through the process of evaluating claims. Smith will issue a report at the end of the summer, which will summarize his initial findings and advice to the Department.

Smith has extensive experience specializing in the independent oversight of complex financial services settlements. In 2012, he was appointed by a bipartisan group of state attorneys general, the federal government and the nation's five largest mortgage servicers to monitor the National Mortgage Settlement, the largest consumer financial protection settlement in U.S. history. In 2013, Smith was appointed to monitor the consumer relief obligations included in the \$13 billion settlement between the U.S. Department of Justice and JPMorgan Chase.

More Resources

 **Press Call**
(<http://www2.ed.gov/news/av/audio/2015/06252015.mp3>)

"Throughout my career in financial services regulation, I have worked to protect the interests of both consumers and taxpayers. That is why it is an honor and a privilege for me to work with the Department of Education on this matter, where I will extend that commitment to protect students as well. In all my work, disclosure and communication have been critical to gaining public trust," said Smith. "I look forward to hearing from stakeholders, including students, those who represent them, attorneys general and the public as this process moves forward."

Under the Obama Administration, the Department of Education has taken has taken unprecedented steps to hold career colleges accountable for giving students what they deserve—a high-quality, affordable education that prepares them for their careers—including:

- Establishing new student aid rules to protect students and taxpayers and ensure students receive an education that leads to good job prospects.
- Strengthening oversight and compliance through inter-agency and Department teams focused on monitoring for-profit institutions.
- Creating options that make student debt more manageable for borrowers, through flexible repayment options such as the Pay As You Earn plan, which caps student loan payments at 10 percent of a borrower's discretionary income.
- Protecting military service members, veterans and their families from predatory actions by for-profit colleges.
- Providing families with clear information to make a smart college choice, by providing a wealth of consumer tools designed to help students and families decide which college is right for them.

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Our mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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[Whereupon, at 1:14 p.m., the committee was adjourned.]

